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1 UNI TED STATES DI STRI CT COURT
2 EASTERN DI STRI CT OF NEW YORK

3 - - - - - X : Cv-07-1416
4 ROBERTSON,

5 :
6 PLAINTIFF,

7 :
8 V. : U. S. Courthouse
9 MATTHEW SULLIVAN, : Brooklyn, New York
10 NILES PRINCE & DIMITRI DEGLAS

11 DEFENDANTS. :
12 : March 2, 2010
13 : 9:30 o'clock a.m.
14 - - - - - X

15 TRANSCRIPT OF TRIAL
16 BEFORE THE HONORABLE JOHN GLEESON
17 UNITED STATES DISTRICT JUDGE and a jury

18 APPEARANCES:

19 For the Plaintiff: JESSICA R. HOLLOWAY, ESQ.
20 STUART W. GOLD, ESQ.
21 HECTOR J. VALDES, ESQ.

22 For the Defendants: GABRIEL HARVIS, ESQ.
23 JEFFREY BROOKS, ESQ.

24 Court Reporter: Sheldon Silverman
(718) 613-2537

25 Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 THE COURT: Good morning. Bring the jury in,
2 please.

3 MR. HARVIS: A couple of quick things?

4 THE COURT: It will wait until the first break. I
5 want to reinforce the jury getting here on time.

6 Does it relate to your cross?

7 MR. HARVIS: Yes, your Honor, one thing. Your
8 Honor said we opened the door to limited inquiry, handcuffing.
9 I have six questions, run them by your Honor.

10 THE COURT: You can run them by me with the jury in
11 the box. If they're out of bounds and there's an objection,
12 I'll rule on it.

13 (Jury enters courtroom.)

14 THE COURT: Good morning. Have a seat. Have a
15 seat, Mr. Robertson.

16 Go ahead, Mr. Harvis.

17 CONTINUED CROSS-EXAMINATION

18 BY MR. HARVIS:

19 Q Good morning, Mr. Robertson.

20 A Good morning.

21 Q Mr. Robertson, when we left off yesterday, we were
22 discussing your scar. I asked you whether or not you have
23 ever been struck with a baton over your left eye prior to
24 April, 2006. You told me that you had not, right?

25 A Right.

1 Q Mr. Robertson, we discussed the fact you had your
2 deposition taken in this case. I want to ask you whether you
3 were asked these questions and whether you gave these answers.

4 "QUESTION: How did -- "

5 Sorry, page 52, line five.

6 "QUESTION: How did -- ?

7 "ANSWER: He hit me with one of those same objects
8 that the police officers hit me with.

9 "QUESTION: What object is that?

10 "ANSWER: Over my left eye. I don't know, a
11 baton, is that what you call it? All right, a baton."

12 Q You also sustained a gunshot wound over your left eye in
13 1988?

14 A Yes.

15 Q You were in fact shot with a .22 caliber bullet over your
16 left eye?

17 A Yes.

18 Q The gunshot resulted in what you call an explosion wound?

19 A Yeah -- I don't know, I'm not sure.

20 Q Mr. Robertson, at your deposition, were you asked this
21 question and did you did you give this answers?

22 "QUESTION: With a gun?

23 "ANSWER: With a gun and I actually -- my
24 forehead actually had an explosion wound. You can tell that
25 it was my tissue was ripped."

1 Were you asked that question, did you give that
2 answer?

3 A I believe so.

4 Q You went to the hospital after you were shot in the
5 forehead?

6 A Yes.

7 Q You received stitches at the hospital, right?

8 A Yes.

9 Q It was not bonding but actual butterfly stitches?

10 A Yes.

11 Q At your deposition you pointed to a scar above your left
12 eye that you said was the result of the gunshot wound?

13 A Yes.

14 Q The scar you pointed to at your deposition is
15 approximately one inch above your left eyebrow?

16 A I would say something like that, probably more.

17 Q Mr. Robertson, I'm on page 48, line 20 of your
18 deposition. Were you asked these questions, did you give
19 these answers?

20 "QUESTION: He shot you in the head with a gun?

21 "ANSWER: Right here, buddy (indicating).

22 "QUESTION: Let the record reflect Mr. Robertson is
23 pointing to a scar on the left side of his forehead
24 approximately one inch above his left eyebrow.

25 "ANSWER: Right."

1 Were you asked those questions, did you give those
2 answers?

3 A Yes.

4 Q Mr. Robertson, you're also kicked over your left eye in
5 January or February of 2006?

6 A My left eye, no.

7 Q Page 55, line 16. Were you asked these questions, did
8 you give these answers?

9 "QUESTION: What physical injuries?

10 "ANSWER: At one time I was jumped at an incident
11 on Nostrand and kicked over my left eye at the same time.

12 "QUESTION: Which eye?

13 "ANSWER: At the same time, the same eye.

14 "QUESTION: Your left eye?

15 "ANSWER: Right."

16 Were you asked those questions, did you give those
17 answers?

18 MS. HOLLOWAY: Objection.

19 THE COURT: Overruled.

20 A I only gave one, I'm only going to agree to one of those,
21 it was the right and maybe as well as on the front,
22 misunderstood.

23 THE COURT: Objection is overruled. You're
24 stipulating accurately to the deposition transcript?

25 MS. HOLLOWAY: I don't believe he read it

1 accurate ly.

2 THE COURT: Could I have a copy of this deposition?

3 MR. HARVIS: Yes.

4 THE COURT: Can someone spare that copy that I can
5 use?

6 MR. HARVIS: Yes.

7 THE COURT: Confer with Ms. Holloway, see if you
8 can agree on what happened.

9 (Pause.)

10 MS. HOLLOWAY: He will read it again.

11 Q I'm reading again from page 55, line 16.

12 "QUESTION: What physical injuries?

13 "ANSWER: At one time I was jumped at an incident
14 on Nostrand and kicked over my eye at the same time.

15 "QUESTION: Which eye?

16 "ANSWER: At the same time, it was the same eye.

17 "QUESTION: Your left eye?

18 "ANSWER: Right."

19 Were you asked those questions and did you give
20 those answers?

21 A I was asked similar questions and I was responding to my
22 right eye.

23 THE COURT: You meant your right eye?

24 THE WITNESS: That was my answer, my final answer.

25 THE COURT: It's your final answer?

1 THE WITNESS: That was the final result of
2 responding.

3 Q I'm now showing you what's been marked for identification
4 as Defendants' Exhibit X-2. Mr. Robertson, do you recognize
5 this document?

6 A Somewhat. It's me, yeah.

7 Q Is it a photograph of you that was taken on August 26th,
8 2004?

9 A August 26th, 2004, possibly.

10 Q Yes?

11 A Possibility.

12 MR. HARVIS: I would like to move this document
13 into evidence as Defendants' Exhibit 2.

14 THE COURT: Any objection?

15 MS. HOLLOWAY: No, can we approach?

16 THE COURT: No. Sustained.

17 Q Mr. Robertson, isn't it true that in 2004 it was noted
18 that you had a scar on the left side of your forehead?

19 A No, 2004, left side of my forehead, no. It was August of
20 that month preparing to come home from my state prison.

21 THE COURT: Would you listen to the question, just
22 answer the question? The answer was no?

23 THE WITNESS: No.

24 Q Mr. Robertson, you claim it took almost a year for the
25 injury and your left eye that you claimed resulted from the

1 incident on April 14th, 2006 to heal?

2 A Could you repeat the question? I didn't get that.

3 Q You claim that it took almost a year for the injury
4 around your left eye that you claim resulted from the
5 April 14th, 2006 incident to heal; is that correct?

6 A I'm not sure. I don't remember, approximately several
7 months into a year.

8 Q Page 179, line nine. At your deposition were you asked
9 these questions and did you give these answers?

10 "QUESTION: Did there come a point in time when the
11 injury around your left eye healed?

12 "ANSWER: Yeah.

13 "QUESTION: When?

14 "ANSWER: About -- Let me see, I think my sixth
15 month.

16 "QUESTION: Six months later?

17 "ANSWER: Almost a year."

18 Were you asked those questions, did you give those
19 answers.

20 A Just what I made that same statement, just about.

21 THE COURT: The question is whether you gave those
22 answers. Did you?

23 THE WITNESS: Yes.

24 Q This document is in evidence. This is Plaintiff's
25 Exhibit 17.

1 THE COURT: This is in evidence already?

2 MR. HARVIS: Yes.

3 THE COURT: I don't recall it.

4 MR. HARVIS: Is it not in evidence? I apologize.

5 Q Mr. Robertson, do you recognize this document?

6 A Yes.

7 Q Is this a photograph that was taken of you on May 11th,
8 2006?

9 A Yes.

10 MR. HARVIS: I would like to offer Plaintiff's
11 Exhibit 17 into evidence.

12 MS. HOLLOWAY: No objection.

13 THE COURT: Received.

14 (So marked.)

15 Q Mr. Robertson, you said this is a photograph of you taken
16 on May 11th, 2006, right?

17 A Yes.

18 Q This photograph shows what you looked like less than a
19 month after the events of April 14th, 2006?

20 A Sorry, could you repeat that? I didn't get the exact
21 time length that you're stating.

22 Q I'm saying this picture shows what you looked like less
23 than a month after the events of April 14th, 2006?

24 A Not true. I was arrested the 13th of May. This photo --
25 I'm not sure what you're saying this took place, this photo.

1 Q You're saying this photograph was taken on May 13th?

2 A No, I'm sorry, excuse me. The distance of time, what
3 date in May you stated this photograph was took?

4 Q All I want to know, was this photograph taken less than a
5 month after the events of April 14th, 2006?

6 A Approximately, exactly a month.

7 Q You claim that the incident on April 14th, 2006 is the
8 cause of your bad knees, right?

9 A Yes, sir.

10 Q But you did injure your right knee in 2002, four years
11 before this incident when you fell on it, right?

12 A I don't recall. I have no idea.

13 Q Do you recall being treated at Coney Island Hospital for
14 an injury sustained when you fell on your right knee on
15 September 10th, 2002?

16 A There was -- no, I don't recall any care for my right or
17 left knee in 2002.

18 Q Mr. Robertson, I'm now showing you what's marked for
19 identification as Defendants' Exhibit L-1. Please take a look
20 at this document. Let me know if it refreshes your
21 recollection as to whether or not you were treated at Coney
22 Island Hospital for an injury to your right knee when you fell
23 on it on September 10th, 2002?

24 THE COURT: Could you point to where you want his
25 attention drawn?

1 Q Note the date of the document and I would also like you
2 to read to yourself what it says here under the written
3 portion here. Let me know when you're done, Mr. Robertson.

4 THE COURT: Don't read it out loud.

5 A I don't understand the handwriting, sorry.

6 Q It does not refresh your recollection?

7 A I don't understand anything the handwriting is saying.

8 Q Do you recall being diagnosed with osteoarthritis in your
9 right knee in 2001?

10 A No, thank you.

11 Q I'm now showing you a document marked for identification
12 as Defendants' U-1. I would like you to take a look at this
13 document. I'll point out where I would like you to look. I'm
14 asking you to look at -- ask you if this portion of the
15 document refreshes your recollection and this portion of the
16 document refreshes your recollection whether or not you were
17 diagnosed with osteoarthritis in your right knee on
18 September 11th, 2002?

19 A I haven't ever reported anything in 2002 about my knee or
20 knees. I don't recall ever having a problem that soon with
21 either of my knees. It definitely wasn't in September. In
22 2002 I was -- excuse me, I was living in Bed-Stuy where I
23 then pick up my gun possession of the third degree in which I
24 resided in Hall Street (ph) at the time. The record
25 reflects --

1 THE COURT: Could you listen to the question? The
2 question is whether this refreshes your recollection.

3 THE WITNESS: It doesn't.

4 THE COURT: Stop interrupting me.

5 THE WITNESS: Okay.

6 THE COURT: The question is whether looking at
7 this, very simple, put aside, you have an independent
8 recollection that you got diagnosed in your right knee with
9 this osteoarthritis in September of '02. That's the question,
10 not where you were living, what you were charged with. Focus
11 on the question.

12 Do you recollect having any such diagnosis on your
13 right knee at that time?

14 THE WITNESS: No, sir, I apologize.

15 THE COURT: That's it. Wait for another question.
16 Stop rambling, okay?

17 THE WITNESS: Yes, sir.

18 Q Mr. Robertson, do you see your name on this document?

19 A Yes.

20 Q Is this document a medical record of yours?

21 A I don't recall. Yes, it looks exactly that way, but I
22 don't recall.

23 MR. HARVIS: I would like to move Defendant's U-1
24 into evidence.

25 MS. HOLLOWAY: No objection.

1 THE COURT: Received.

2 (So marked.)

3 Q This document is now in evidence. I want to point out
4 for the jury here where it says -- excuse me, I'll refer you
5 to where you see here it says under I CD-9, diagnosis,
6 osteoarthritis, localize, not specified whether primary or
7 secondary, lower leg, interpretation right knee?

8 THE COURT: It's in evidence.

9 MR. HARVIS: Sorry.

10 THE COURT: Don't read it. It's in evidence. Now
11 you've got it.

12 MR. HARVIS: Thank you.

13 Q Mr. Robertson, are you aware that osteoarthritis is a
14 common joint disorder?

15 A No, I have no idea.

16 Q Do you recall being treated at the Coney Island Hospital
17 emergency room on March 20th, 2006 for an injury to your right
18 knee?

19 A No.

20 Q I'm now showing you what has been marked for
21 identification as Defendant's Exhibit U-2. I would like you
22 to take a look at this portion of the document right here,
23 this portion right here, and this portion right here. Let me
24 know if that refreshes your recollection as to whether or not
25 you visited the Coney Island Hospital emergency room for

1 treatment for a knee injury in 2006.

2 A I see it. Could you repeat the question?

3 Q Yes. Looking at this document, does it refresh your
4 recollection as to whether or not you were treated at the
5 Coney Island Hospital emergency room for a knee injury in
6 March of 2006?

7 A There's no recollection. I don't remember being treated
8 for a knee injury.

9 THE COURT: What you're trying to say here is "no",
10 you don't have a recollection?

11 THE WITNESS: I'm --

12 THE COURT: It's okay to say you don't recollect.

13 THE WITNESS: I'm not sure if I could give the
14 proper response to this.

15 THE COURT: You either have a recollection or you
16 don't.

17 THE WITNESS: Yes, but it wasn't no injury.

18 THE COURT: Tell us what you do recall.

19 THE WITNESS: Okay, I recall going into the
20 emergency room requesting information, some type of diagnosis
21 which I wasn't given. It was explained to me to follow up
22 further, with further instructions to be dated, which I did
23 not complete, for x-rays, or continued interest in completing
24 during that time. It was just I felt it was a slight hardship
25 effect from me staying motivated too much, being, you know, a

1 single parent. That was my main interest in entering the
2 emergency room, to seek and sought myself some type of care
3 and concern so that I can continue to care for mine.

4 Q This is another one of your medical records?

5 A It is to me.

6 MR. HARVIS: I would like to move it into evidence,
7 Plaintiff's Exhibit U-2.

8 THE COURT: Any objection?

9 MS. HOLLOWAY: No.

10 THE COURT: Received.

11 (So marked.)

12 Q Mr. Robertson, your left knee was also injured on
13 May 24th, 2006, right?

14 A On where?

15 Q May 24th, 2006.

16 A Injured where? In what incident?

17 THE COURT: Just answer the question. Was it
18 injured on that day?

19 THE WITNESS: No, I don't recall.

20 THE COURT: Don't ask him questions. Just answer
21 them.

22 THE WITNESS: No.

23 MR. HARVIS: I'll show the witness a document that
24 is not in evidence.

25 Q Mr. Robertson, all I want to know about when you look at

1 this document is whether or not this document refreshes your
2 recollection as to your left knee being injured on May 24th,
3 2006.

4 A Yeah, there's a recollection on this document because
5 it's the corrections department.

6 Q It does refresh your recollection about that?

7 A Of course.

8 Q Mr. Robertson, you never mentioned a knee injury in your
9 first letter to the comptroller, William Thompson, right?

10 A Correct.

11 Q You never mentioned any knee injury in your second letter
12 to the comptroller, right?

13 A Correct.

14 Q You also never mentioned a knee injury in the complaint
15 you filed with this court, right?

16 A No, not at all.

17 Q You did not, okay. In fact, the first time you ever said
18 anything about any knee injury was when you testified in your
19 deposition in December of 2008, right?

20 A Just about, yeah.

21 Q You claim because of what happened on April 14th, 2006
22 today you have pain in your shoulder?

23 A Yes.

24 Q But you actually sustained a gunshot wound to your bicep
25 on January 1st, 1993?

1 A I'm not sure what part of the statement of bicep. Be
2 more specific, please.

3 Q Did you sustain a gunshot wound to your bicep on
4 January 1st, 1993?

5 A I have no recollection of what bicep means besides
6 knowing where I was injured.

7 MR. HARVIS: Page 44, line 14.

8 THE COURT: Don't go there yet. Be more specific.
9 Where did you get shot? Show us.

10 A I was shot in my right arm.

11 Q You're saying you were not shot in the bicep?

12 A I was shot in my left arm, yes.

13 THE COURT: Could you show us where? You don't
14 have to take your shirt off.

15 THE WITNESS: It came in here, went out there.

16 THE COURT: Indicating above the elbow, an inch and
17 a half above the elbow. Go ahead.

18 Q Mr. Robertson, because of your gunshot, your arm is not
19 normal all the time?

20 A Yeah, sort of, yes.

21 Q Your arm also feels heavy, right?

22 A Sometimes.

23 Q Again, there's no mention of a shoulder injury in your
24 first letter to the comptroller, William Thompson?

25 A No.

1 Q There's no mention of your shoulder in your second letter
2 to William Thompson?

3 A No.

4 Q You never mentioned the shoulder injury in your
5 complaint?

6 A No.

7 Q You didn't even mention your shoulder once in your
8 deposition in December of 2008.

9 A I'm not sure. I don't recall.

10 Q Isn't it true --

11 A Whether I did or didn't.

12 Q Isn't it true the first time you mentioned anything about
13 your shoulder was in December of 2009, less than four months
14 ago?

15 MS. HOLLOWAY: Objection.

16 THE COURT: Overruled.

17 A I'm not sure. I don't have an answer to that because you
18 just said --

19 THE COURT: Forget the "because." You don't know if
20 that's the case?

21 THE WITNESS: It was further in 2008, as you said
22 the first time, so it wasn't 2009.

23 Q What did you say in 2008, about 2008?

24 A I'm not sure. I'm not exactly sure, but I could give you
25 a brief explanation. I'm sure I explained to you that in the

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1 matters of my shoulder, it was just an extra -- in the
2 definition toward me adding in addition on what's relevant
3 that I didn't mark and the reason I gave you was this exact
4 same eye injury, I did not --

5 THE COURT: Excuse me, it might be me. I don't know
6 what you said.

7 Did you complain about your shoulder in 2008?

8 THE WITNESS: Yes, I did.

9 THE COURT: Go ahead.

10 Q Mr. Robertson, you took photographs of your injuries just
11 two days after the April 14th, 2006 incident, right?

12 A Could you repeat that, please?

13 Q You took photographs or had photographs taken of your
14 injuries two days after the incident on April 14th, 2006.

15 A Correct.

16 Q You had those photographs at the time you filed your
17 complaint for this lawsuit, right?

18 A I had those -- no, not correct.

19 8 I'm now showing you the complaint in this Lawsuit --

20 THE COURT: This is what, plaintiff's exhibit what
21 in evidence?

22 MR. HARVILL: It's DX-Y --

23 THE COURT: What is it?

24 MR. HARVILL: Defendants' Exhibit Y

25 MS. HOLLOWAY: Premarked

1 Q Mr. Robertson, I'm drawing your attention to page five of
2 the document here, section letter I. Can you read to the jury
3 what it says? Let me read it and tell me if that's what it
4 says or not. Does this say, I also have 12 by 12 printed out
5 snapshots of what my face looked like -- I looked and felt
6 like?

7 A Yes.

8 THE COURT: Could you push that mike a couple of
9 inches away from you? That's it. Thank you.

10 THE WITNESS: Yes.

11 Q Mr. Robertson, you had the photographs of your injuries
12 at the time of your deposition in 2008, right?

13 A No.

14 MR. HARVIS: Page 178, Line 15 of the deposition.

15 Q Were you asked this question, did you give this answer?

16 "QUESTION: Did you ever see the photographs?

17 "ANSWER: Yeah, I have a few copies."

18 Were you asked that question, did you give that
19 answer.

20 A No.

21 THE COURT: Keep going.

22 "QUESTION: You have copies?

23 "ANSWER: Right, I hold a few copies. I don't
24 have them presently.

25 "QUESTION: Where are they now?

1 "ANSWER: They are in my mom's apartment in a safe
2 place, somewhere she put them, but yeah."

3 Were you asked those questions, did you give those
4 answers, Mr. Robertson?

5 A I was asked those questions and no, I did not give those
6 exact answers, neither one of them you just stated.

7 Q Did you ever provide an errata sheet with any corrections
8 to your deposition transcript in 2008?

9 A I don't understand what you're saying.

10 Q Did you ever provide any corrections to the deposition of
11 you that was taken in December of 2008?

12 A No, I didn't provide any corrections. I received one
13 copy approximately a week later.

14 THE COURT: This is before you were represented by
15 counsel?

16 THE WITNESS: Exactly.

17 THE COURT: Move off that subject, please.

18 MR. HARVIS: The entirety of the photographs, your
19 Honor?

20 THE COURT: No, you can continue, the errata sheet,
21 move off of that. He was prose at the time.

22 Q As we just discussed -- withdrawn.

23 You said the photographs were at your mother's
24 apartment, that you were going to look to them and give them
25 to me, right, Mr. Robertson?

1 A That was correct.

2 Q You also said at your depositions if you couldn't find
3 them, you're going to get copies from the person who took
4 them, right?

5 A I would attempt that. I explained it.

6 Q But you never gave me copies of those photographs, right?

7 A You're right, no.

8 Q You don't have them with you here today, right?

9 A No.

10 Q You lost those photographs, right, Mr. Robertson?

11 A As it was explained the first time up until now, yeah.

12 Q Yes, you lost them?

13 A Yeah, somehow.

14 Q You testified yesterday that you attempted to get mental
15 health treatment at the Jewish Board and South Beach, right?

16 A Yes.

17 Q When was that?

18 A A few times.

19 Q When in time?

20 A 2005, 2006, 2007 and also again in 2008.

21 Q You said they wanted to put you on a waiting list, right?

22 A Yes, 2009.

23 Q They wanted to put you on a waiting list in 2009?

24 A All three places.

25 Q Did you have yourself put on that waiting list?

1 A It wasn't accessible until being interviewed through a
2 social worker, which I had to find, I had to have an
3 appointment to see one actually. So, no.

4 Q Did you make an appointment to see one?

5 A I requested, but they declined. That was my explanation.

6 Q You requested to have an appointment made and they told
7 you you cannot make an appointment?

8 A No, about the social worker, they didn't tell me no, I
9 couldn't. They explained. They basically played hard ball
10 with me. There was no response by the social worker.

11 Q Did you ever seek mental health treatment at Coney Island
12 Hospital or Brookdale Hospital?

13 A Coney Island Hospital.

14 Q What about Brookdale?

15 A I just answered Coney Island Hospital I received
16 psychiatric treatment, and observation, sir.

17 Q As a result of following this incident, you went to Coney
18 Island --

19 A No.

20 Q What I'm asking, the emotional injuries you claim
21 resulted from this incident, did you ever seek treatment for
22 those injuries, mental health facilities at Brookdale Hospital
23 or Coney Island Hospital?

24 A No.

25 Q Did you ever seek mental health treatment following this

1 incident at any other hospital in Brooklyn?

2 A No.

3 Q Mr. Robertson, you've been arrested approximately 23
4 times including the arrest on April 14th, 2006?

5 MS. HOLLOWAY: Objecti on.

6 THE COURT: I'm going to allow a little bit of
7 questioning here only because you heard testimony yesterday
8 about how circumstances of this arrest distinguished
9 themselves in terms of the police conduct from the plaintiff's
10 view from the circumstances of his other arrests. In light of
11 that, it seems to me fair to allow a little bit of cross.

12 It's treacherous territory because there's prejudice
13 associated with someone being arrested. You learn someone has
14 been arrested, this case is going to boil down to your
15 determination whether Mr. Robertson has proved by a
16 preponderance of the evidence the elements of his claims and
17 at the heart of that will be whether he's proved by a
18 preponderance of the evidence the mistreatment he claims he
19 was subjected to in April of 2006. If you find the
20 evidence -- I don't know what the rest of the testimony is
21 going to be. I'm like you, hearing it, too, for the first
22 time. If you find the evidence is on the knife's edge, a
23 difficult call, you can't decide this claim against
24 Mr. Robertson because he had been arrested many times in the
25 past. That wouldn't be right. Be careful and limit the use

1 to which you put this testimony. I'm only going to allow a
2 little bit of this testimony, a little bit of questioning, a
3 little bit of probing by Mr. Harvis. The only permissible use
4 you can put to it is to assess this testimony, obviously to
5 test the credibility of this witness being challenged. He's
6 testified on prior occasions he was treated a certain way that
7 was unobjectionable. Here, the treatment he got distinguished
8 itself significantly. Having said that, some additional
9 questioning about his treatment on these prior occasions --
10 you're going to ask questions, Mr. Harvis, about the use of
11 handcuffs, I take it?

12 MR. HARVIS: Yes, your Honor.

13 THE COURT: We'll get to that in a minute. Only
14 use it to the extent, if any, you think it sheds useful light
15 on his credibility regarding what happened in April of 2006.
16 Don't allow, don't hold it against Mr. Robertson. The last
17 thing we're going to do is try all these other events that
18 gave rise to these prior arrests. That's irrelevant to us.
19 Don't hold it against him. It's important that you don't do
20 that. Understood?

21 Any objection to the limiting instruction by
22 anybody?

23 MS. HOLLOWAY: No objection.

24 MR. HARVIS: No.

25 THE COURT: Go ahead, please.

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1 Q Mr. Robertson, you've been arrested approximately 23
2 times?

3 A Something like that, just about.

4 Q Do you know for how many of those arrests you were
5 handcuffed?

6 A I was arrested, I was cuffed.

7 Q You've also been incarcerated, right?

8 A A few times.

9 THE COURT: Sustained.

10 Q How many times would you say you've been handcuffed in
11 your life, Mr. Robertson?

12 A A little over ten.

13 Q A little over ten?

14 A Yeah.

15 Q You just said -- withdrawn.

16 April 14th, 2006 is the only time the handcuffing
17 was painful for you?

18 A Yeah.

19 MR. HARVIS: No further questions.

20 THE COURT: Is there any redirect?

21 MS. HOLLOWAY: Yes.

22 THE COURT: Would you like to conduct it?

23 Go right ahead.

24 Thank you, Mr. Harvis.

25

1 REDI RECT EXAMINATION

2 BY MS. HOLLOWAY:

3 Q Good morning.

4 A Good morning.

5 Q We've heard testimony you've been arrested a number of
6 times before, correct?

7 A Yes.

8 Q Have you ever before filed a lawsuit complaining about
9 the treatment that you received from police officers during
10 any of those arrests?

11 A No.

12 Q We heard testimony a moment ago about a gunshot wound to
13 your forehead, correct?

14 A Correct.

15 Q We heard testimony that you have a scar on your forehead
16 from that gunshot wound, correct?

17 A Yes.

18 Q Can you point to that scar on your forehead, please?

19 A (Indicating).

20 Q Can you lift your head up so the jury can see?

21 A (Indicating).

22 Q I can't see from here how high above your left eye it is?

23 A (Indicating).

24 MS. HOLLOWAY: Stipulated about an inch above his
25 left eye.

1 THE COURT: Fair enough.

2 Q Would you point to the scar, Mr. Robertson, when I was
3 asking you questions yesterday that you have as a result of
4 being struck with the baton on April 14th, 2006?

5 A (Indicating).

6 Q You're pointing to a scar that's in your eyebrow?

7 A Yes.

8 Q Those are two different scars you just pointed to?

9 A Yes.

10 Q We just heard testimony, and Mr. Harvis read some
11 testimony from your deposition transcript about a time
12 previously that you were hit with an object like a baton that
13 you described like a baton, correct?

14 A Correct.

15 Q Where were you hit with that baton or baton-like object?

16 A My bottom lip on the right side.

17 Q In fact, at your deposition, if you recall, do you recall
18 testifying that you had an injury on your lip?

19 A I believe so.

20 Q You saw during Mr. Harvis's questioning some medical
21 records for some injury you received to your knee, correct,
22 Mr. Robertson?

23 A I believe so.

24 Q It's your testimony you then received another injury to
25 your knees as a result of the arrest of April 14th, 2006,

1 correct?

2 A Yes.

3 Q In fact, your knees have been injured a number of times,
4 including on April 14th, 2006, right, Mr. Robertson?

5 A I wouldn't say injured, but giving me trouble.

6 Q Was the trouble that your knees gave you after your
7 arrest on April 14th, 2006 worse than the trouble your knees
8 were giving you before that arrest?

9 A Yeah.

10 THE COURT: Could you push that mike a couple of
11 inches away from your face? Thank you.

12 Q Mr. Robertson, you testified that you had photographs
13 taken of the injuries you sustained as a result of your
14 arrest, correct?

15 A Right.

16 Q Who did you take those photographs for you?

17 A A friend of mine's nice.

18 Q She took those photographs and did she print out copies
19 for you?

20 A Yes, she did.

21 Q What did you do with those copies of the photos?

22 A I placed them in my room in my closet, the shelf in my
23 mom's apartment, 3002 Surf Avenue.

24 Q After you placed those photographs in your closet in your
25 mom's apartment, you were then incarcerated for your parole

1 violation, correct?

2 A Correct.

3 Q Approximately how long were you incarcerated and
4 therefore not living at your mother's house on Surf Avenue?

5 A For a year, like two months.

6 Q Do you know whether there was anyone else living in your
7 mother's apartment or sleeping in your bedroom during that
8 time?

9 A Yes.

10 Q Who is staying in your bedroom at that time?

11 A My cousin and her children's father.

12 Q When was the next time that you looked for those
13 photographs?

14 A Once I was released.

15 Q When you looked in your closet for the photographs you
16 had put there, they weren't there anymore?

17 A No, they weren't.

18 Q Do you know whether your friend's niece, who took the
19 photographs, still had copies of the photographs?

20 A No, at the time the same person suffered from illness.
21 So, it was very difficult to even speak with them.

22 Q Why had you asked her to take those photographs of you
23 two days after the incident on April 14th?

24 A So that I could sought -- show more evidence and
25 background of my case, I intended.

1 Q During my direct examination of you, you testified that
2 you weren't intoxicated during the incident on April 14th,
3 2006, correct?

4 A Correct.

5 Q You also testified that you hadn't consumed any alcohol
6 or used any drugs at all in the hours preceding that incident,
7 correct?

8 A Correct.

9 Q Then we heard testimony when Mr. Harvis was asking you
10 questions, he read from your deposition, and he elicited
11 testimony that you may have smoked marijuana at some point
12 earlier that day, correct, do you recall that?

13 A I recall going into that.

14 Q As we sit here today, do you recall whether you smoked
15 any marijuana on the day of the incident?

16 A No, not really. It might have been the day before or
17 during the morning, maybe.

18 Q You don't recall whether you did on the morning of the
19 incident?

20 A Right.

21 Q Your testimony is that you certainly did not in the hours
22 preceding the incident, correct?

23 A No, at all.

24 Q You're not sure now, and were you sure when your
25 deposition was taken?

1 A No, I'm sure I didn't -- well, I'm sure I didn't smoke
2 or do any drugs during that day as I'm proceeding.

3 Q Certainly not after you left your mother's house, went to
4 your aunt's house?

5 A No.

6 Q Do you remember what time that was?

7 A Approximately between two and one, a lot before three?

8 Q Sometime in the afternoon?

9 A Yes.

10 MS. HOLLOWAY: That's it.

11 THE COURT: Ms. Holloway, thank you. Anything
12 further?

13 MR. HARVIS: No, your Honor.

14 THE COURT: You may step down, Mr. Robertson.

15 Call your next witness, Ms. Holloway.

16 MS. HOLLOWAY: My next witness isn't here yet. I
17 intended to call Ms. Tasha Ricks. She's arriving in twenty
18 minutes. We could either play the deposition of the officers.

19 THE COURT: Let's do that since we don't really
20 have an option. It's either play the deposition testimony or
21 just wait around?

22 MS. HOLLOWAY: The other option, we'll offer the
23 testimony of Eleanor Dorfman to put into evidence --

24 THE COURT: Whatever you prefer.

25 MS. HOLLOWAY: I prefer to play the deposition

1 testimony.

2 THE COURT: Go right ahead.

3 MR. HARVIS: Might we have a brief side bar?

4 THE COURT: Yes, come up.

5 (Continued on next page.)

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1 (Si de bar.)

2 THE COURT: Yes?

3 MR. HARVIS: It's not clear exactly what plaintiff
4 anticipating what's happening now. Is it that the officers'
5 deposition testimony, all three officers, be played just
6 continuously or that they will be played, then we have an
7 opportunity to call them on cross or something like that, or
8 some variation? More as a practical question how does that
9 work?

10 THE COURT: I assume these are being offered as
11 statements of party opponents. There's not going to be any
12 cross because you can't cross a tape.

13 MR. HARVIS: Is plaintiff also going to call them
14 as live witnesses?

15 MS. HOLLOWAY: No.

16 THE COURT: I assume not. You're going to call
17 these folks, then put in photos and call Ms. Ricks?

18 MS. HOLLOWAY: Yes.

19 MR. HARVIS: One more thing. Are there objections
20 contained in the testimony, are those objections not to be
21 ruled on?

22 THE COURT: I'll rule on them.

23 MS. HOLLOWAY: We designated the testimony, put in
24 our joint pretrial order. The defendants didn't object in the
25 course of putting together the pretrial order to any of those

1 specific objections, didn't preserve the objections nor to any
2 cross of the testimony.

3 MR. HARVIS: The objections are in the testimony
4 itself.

5 THE COURT: I'll hear them. I'm not going to rule
6 on them.

7 MR. HARVIS: Can they be cut out?

8 MS. HOLLOWAY: The objections were taken out of the
9 videotape.

10 THE COURT: Do I have a transcript I can look at?

11 MS. HOLLOWAY: We do.

12 MR. GOLD: I note for the record if there are
13 rulings, technologically, we may have to create another DVD.

14 THE COURT: Right. Let me take a quick look.

15 (Pause.)

16 (Continued on next page.)

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1 (Si de bar continues.)

2 MS. HOLLOWAY: This is Officer Prince.

3 THE COURT: This is what you are going to play?

4 MS. HOLLOWAY: Yes.

5 In some instances, we revised the -- this contains
6 everything that we are going to play. The videos are somewhat
7 shorter. We got rid of all the other things.

8 THE COURT: So I will see on here adjacent to what
9 you play any objections that were made at the time?

10 MR. HARVIS: Yes.

11 THE COURT: All right. Any reason I can't -- I will
12 look at it. If I decide that that objection would have been
13 sustained, I will tell the jury to disregard that testimony.

14 MS. HOLLOWAY: Okay.

15 MR. HARVIS: Sure.

16 MR. BROOKS: That's fine.

17 MS. HOLLOWAY: Here are the other two. That's
18 Sullivan. This is Degl as.

19 THE COURT: I look forward to it.

20 MS. HOLLOWAY: Yes.

21 (In open court.)

22 THE COURT: Would you like to know what's going on?

23 Okay. The next piece of the plaintiff's case
24 consists of statements made by the defendant detectives or
25 sergeant, as the case may be, which can be offered by them as

1 evidence. They are statements that were made in what we call
2 the discovery phase of the case, depositions. You already
3 heard how depositions, sworn testimony, was given by the
4 participants in the disputed events. You are going to hear
5 excerpts culled from the deposition, the videotaped deposition
6 testimony of each of the defendants, and you can consider it
7 as evidence.

8 All right. Who are we starting with?

9 MS. HOLLOWAY: We are starting with Officer Prince,
10 Your Honor.

11 Can we take a moment for a restroom break before we
12 play the videos?

13 THE COURT: Yes. Short break. Don't discuss the
14 case.

15 All rise.

16 (The following occurred in the absence of the jury.)

17 THE COURT: All right.

18 (Recess taken.)

19 THE COURT: Are we ready to go?

20 MS. HOLLOWAY: I have conferred with defendants'
21 counsel and we have agreed that when the jury returns I will
22 move the documents into evidence that are going to be
23 discussed during the depositions. Defendants' counsel has no
24 objection. These documents are their trial exhibits. We will
25 show them to the jury and then we will play the videos.

1 THE COURT: Okay. Are you ready?

2 MR. HARVIS: Your Honor, we are waiting for the
3 officers.

4 THE COURT: Okay. Please get them.

5 (Jury present.)

6 THE COURT: Okay. Please be seated, everyone.

7 All right. Let's go.

8 Are going to offer some exhibits into evidence?

9 MS. HOLLOWAY: I am.

10 THE COURT: They are?

11 MS. HOLLOWAY: Prior to playing the deposition
12 testimony we are going to offer some documents into evidence.

13 THE COURT: Yes.

14 MS. HOLLOWAY: Those documents have previously been
15 marked Plaintiff's Exhibits 11, 19, 22 -- I'm sorry -- 12, 13,
16 9 and 10. I am going --

17 THE COURT: I take it, there is no objection, is
18 that correct, Mr. Harvis?

19 MR. HARVIS: That is correct, Your Honor.

20 THE COURT: They are all received.

21 (So marked.)

22 MS. HOLLOWAY: Plaintiff's Exhibit 19.

23 (Displayed on EIMo.)

24 Plaintiff's Exhibit 12.

25 (Displayed on EIMo.)

1 THE COURT: What is that? Is that the arrest
2 report?

3 MS. HOLLOWAY: Yes.

4 THE COURT: Is that for the event giving rise to the
5 claims in this case?

6 MS. HOLLOWAY: This is the arrest report in Omni form
7 System.

8 THE COURT: Okay. What was the earlier one, memo
9 pads from one of the officers?

10 MS. HOLLOWAY: Plaintiff's Exhibit 19 is an excerpt
11 from the memo pad of Dimitri Deglas. This is the first page.
12 It is an excerpt from the night the incident took place.

13 This is Plaintiff's Exhibit 11, which is the scratch
14 copy or the hardcopy of the arrest report from the arrest the
15 night in question.

16 (Displayed on Elmo.)

17 This is the second page of that scratch copy.

18 THE COURT: All right.

19 MS. HOLLOWAY: This is the Omni form System complaint
20 related to the arrest on the night in question.

21 THE COURT: What was that last one?

22 MS. HOLLOWAY: Plaintiff's Exhibit 13.

23 THE COURT: Okay.

24 MS. HOLLOWAY: This is Plaintiff's Exhibit 9, which
25 is the property clerk's invoice relating to the 18 clear zips

1 of marijuana allegedly recovered.

2 THE COURT: Okay.

3 MS. HOLLOWAY: This is Plaintiff's Exhibit 10, which
4 is the property clerk's invoice for the two black gloves that
5 were allegedly --

6 MR. BROOKS: Objection to allegedly, Your Honor.

7 THE COURT: Why? Isn't that in dispute in the case?

8 MR. BROOKS: Withdrawn.

9 THE COURT: Those are your exhibits?

10 MS. HOLLOWAY: Yes, Your Honor.

11 THE COURT: All right. Sorry. We have to take
12 another break. This time it is my fault.

13 I will tell you why. In this building each year
14 between 45 and 50,000 people become naturalized citizens and I
15 am on Miscellaneous Duty, which gives me the privilege today
16 of swearing in 250 of them about downstairs. They are waiting
17 downstairs. It only takes about 15 minutes. It is worth the
18 wait.

19 We will resume at 11:00 o'clock.

20 Don't discuss the case.

21 All rise.

22 (The following occurred in the absence of the jury.)

23 THE COURT: All right. We are in recess for
24 15 minutes.

25 (Recess taken.)

1 THE COURT: Where are you playing it from? The
2 prosecution table laptop, position two?

3 MS. HOLLOWAY: Yes.

4 THE COURT: Okay.

5 (Jury present.)

6 THE COURT: Please be seated, everyone.

7 Okay. Are you ready with the excerpts from the
8 deposition?

9 Who is this? Detective Prince?

10 MS. HOLLOWAY: Yes, it is, Your Honor.

11 Yes, we are.

12 THE COURT: Okay. Go right ahead.

13 (Video plays.)

14 THE COURT: What page are we on?

15 MS. HOLLOWAY: 21.

16 (Video continues to be played.)

17 THE COURT: What page are we on?

18 MS. HOLLOWAY: 108. That's it.

19 THE COURT: Is that it?

20 MS. HOLLOWAY: Yes.

21 (Video stops.)

22 MS. HOLLOWAY: I apologize for the lack of linking,
23 appropriate linking in the video. I think it will be improved
24 in the next one.

25 THE COURT: That's all right. The audio is fine.

1 We understand, these are excerpts. Sometimes there is a
2 little lack of fit between the video and the audio feed.

3 Who is next?

4 MS. HOLLOWAY: Degl as.

5 (Video plays.)

6 THE COURT: Page?

7 MS. HOLLOWAY: Nine.

8 (Video continues.)

9 (Continued on next page.)

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1 (Video continues play.)

2 (Video tape stops.)

3 THE COURT: This is finished.

4 MS. HOLLOWAY: I marked for identification the
5 second page what's been previously marked Plaintiff's
6 Exhibit 6, the document that Officer Sullivan, the accusatory
7 instrument, I marked, I would like to mark it as 6-A, move it
8 into evidence.

9 THE COURT: Any objection?

10 MR. HARVIS: No.

11 THE COURT: Received.

12 (Pause.)

13 MS. HOLLOWAY: This is Plaintiff's Exhibit 6-A
14 (indicating).

15 THE COURT: Call your next witness.

16 MS. HOLLOWAY: We call Tasha Ricks.

17 MR. HARVIS: Side bar?

18 THE COURT: Sure.

19 (Continued on next page.)

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1 (Side bar.)

2 THE COURT: Yes?

3 MR. BROOKS: The defendants renew their objections
4 to plaintiff calling Ms. Ricks as a witness. We want to
5 express our concern she's going to testify about some of the
6 crucial points, about probable cause for the arrest. As the
7 defense attorneys, we're concerned she would try to put in her
8 evaluation.

9 THE COURT: She's not going to do that?

10 MS. HOLLOWAY: Just testimony based on her
11 recollection of the appearances she made in this case in
12 connection with the charges that were filed against
13 Mr. Robertson.

14 MR. BROOKS: That's fine.

15 MS. HOLLOWAY: I don't intend to elicit any
16 testimony based on any privileged conversations Ms. Ricks had
17 with Mr. Robertson nor anything she recalls by virtue of
18 reviewing any privileged documents. If cross-examination
19 proceeds in a way treading on this, I'm going to object on
20 those grounds. I want to say by calling her, I don't intend
21 to waive privilege.

22 THE COURT: As long as we're here, I reviewed --
23 I'll mark as Court Exhibits A, B and C these transcripts I
24 have of the depositions of the three individuals, the three
25 defendants.

1 The record ought to reflect the highlighted portions
2 of them include things that were not on the CD or the DVD that
3 was played. I take it that DVD includes only what the jury
4 saw?

5 MS. HOLLOWAY: Yes.

6 THE COURT: If someone wants to examine what was
7 actually played, Court Exhibits A, B and C wouldn't be the
8 place to go. That DVD -- did we mark it in evidence?

9 MS. HOLLOWAY: We didn't.

10 THE COURT: Let's call it?

11 MS. HOLLOWAY: Plaintiff's Exhibit 43?

12 THE COURT: Let's call it Plaintiff's Exhibit 100,
13 shows what was actually shown to the jury. I reviewed the
14 objections as we went and they're all overruled. Some of
15 them, truth be told, I couldn't quite tell the basis as I was
16 going through it. That happens when you do it live as well.
17 In any event, the objections are overruled, so I'm not going
18 to strike anything. I will prepare and put court exhibit
19 stickers on the transcripts so you have your objections
20 preserved.

21 THE COURT: Government Exhibit 100 is in evidence.

22 (So marked.)

23 THE COURT: Are you Ms. Ricks?

24 THE WITNESS: I am.

25 THE COURT: Please come up. Please stand behind

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1 that witness chair. Mr. McMann will swear you in.

2 TASHA RICKS,

3 having been duly sworn/affirmed, was examined
4 and testified as follows:

5 THE LAW CLERK: . Take your seat, state and spell
6 your name for the record.

7 THE WITNESS: Good afternoon, my name is Tasha
8 Ricks, RICKS.

9 DIRECT EXAMINATION

10 BY MS. HOLLOWAY:

11 Q Good morning, Ms. Ricks.

12 A Good afternoon.

13 Q Good afternoon.

14 What is your profession, Ms. Ricks?

15 A I'm a criminal defense attorney.

16 Q How long have you been a criminal defense attorney?

17 A For seven years.

18 Q Were you an attorney prior to those seven years as a
19 criminal defense attorney?

20 A I was a practicing attorney prosecuting abuse and neglect
21 cases for the State of New York.

22 Q Are you currently employed?

23 A Yes, I am.

24 Q Where are you employed?

25 A The Legal Aid Society here in Brooklyn.

1 Q Are you employed in the criminal defenses division of the
2 Legal Aid Society?

3 A As a staff attorney.

4 Q How long have you worked in the criminal defense division
5 at Legal Aid?

6 A For seven years.

7 Q You're working in the criminal defense division at Legal
8 Aid in 2006?

9 A Yes.

10 Q Have you previously met plaintiff Dwayne Robertson?

11 A Yes.

12 Q You understand you're testifying in an action brought by
13 Mr. Robertson relating to an April 14th, 2006 arrest?

14 A Yes.

15 Q Did you represent him in connection with criminal charges
16 that were filed against him in connection with that arrest?

17 A Yes, I did.

18 Q Were you present at his arraignment on those charges?

19 A No, I was not.

20 Q Were you present at other court appearances relating to
21 those charges in that arrest?

22 A Yes.

23 Q I would like to show you what's been previously marked as
24 Plaintiff's Exhibit 6-A entered into evidence.

25 THE COURT: Go ahead.

1 MR. BROOKS: This is not in evidence, your Honor.

2 THE COURT: All right.

3 MS. HOLLOWAY: I'm sorry --

4 (Pause.)

5 Q Do you recognize this document, Ms. Ricks?

6 THE COURT: What exhibit is this?

7 MS. HOLLOWAY: 6-A.

8 THE COURT: Is it in evidence?

9 MS. HOLLOWAY: Yes, it is in evidence.

10 A Yes, I recognize it.

11 Q What is this document?

12 A It's the criminal court complaint that was filed
13 regarding the April matter.

14 Q Is this the complaint that initiated the criminal
15 proceeding against Mr. Robertson?

16 A Yes, ma'am.

17 MS. HOLLOWAY: I would like to mark for
18 identification and show the witness Plaintiff's Exhibit 6-B
19 which is the third and fourth pages of what was previously
20 marked as plaintiff's Exhibit 6.

21 Q Do you recognize this document?

22 A I do.

23 Q Have you seen it before?

24 A I have.

25 Q Do you review this kind of a document in the course of

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1 your job as a residence attorney in the criminal defense
2 division?

3 A Yes, I do.

4 MS. HOLLOWAY: I would like to move this document
5 into evidence.

6 THE COURT: Any objection?

7 MR. BROOKS: Objection, foundation.

8 THE COURT: What is this document?

9 THE WITNESS: It's the court action summary for the
10 appearances of the attorneys and the clients that occurred on
11 the subsequent dates from the arraignment. I appeared on
12 them. The court made notations as to my appearance as well as
13 my client.

14 THE COURT: Who creates this document?

15 THE WITNESS: The document itself is created by the
16 judge's handwriting based on the attorneys that appear, the
17 client that appears, the action that occurs on the record in
18 that court.

19 THE COURT: Where is it kept? Is it part of your
20 file or the court file?

21 THE WITNESS: Officially part of the court file.
22 It's part of my file if I get a copy and put it in the file
23 based on what occurred at that particular date.

24 THE COURT: Did this come from your file?

25 THE WITNESS: Yes.

1 MR. BROOKS: We were never provided a copy.

2 THE COURT: Come up to side bar. Bring your
3 exhibit.

4 (Continued on next page.)

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1 (Open court.)

2 MR. BROOKS: Plaintiff withheld the entire file on
3 behalf of attorney-client privilege.

4 MS. HOLLOWAY: Mr. Brooks asked for the file.

5 I said any documents in the file that were not privileged,
6 there were duplicates in the court file, I produced them.
7 I heard no further objection from Mr. Brooks.

8 THE COURT: What are we doing with this witness?

9 Are we establishing the circumstances surrounding the
10 dismissal of the charge?

11 MS. HOLLOWAY: Yes.

12 THE COURT: What is this, Plaintiff's 6?

13 MS. HOLLOWAY: 6-B.

14 THE COURT: What's on them? What do they say?

15 MS. HOLLOWAY: I'm going to elicit from her each of
16 these boxes is the one court appearance that was made, each of
17 these is for a court appearance made and she appeared at all
18 these court appearances. I'll ask her what this relates to,
19 ask her if she's familiar with the notation, "no corrobor
20 lab." Does she recall what this is referring to that occurred
21 at this court appearance. She will say yes. Then I'm going
22 to introduce the transcript from this appearance, subsequent
23 appearance, ask her to review it, accords what happened in
24 that conference, whether the charges were dismissed.

25 THE COURT: Any dispute about any of this?

1 MR. HARVIS: No.

2 MR. BROOKS: The concern I have is her reading the
3 notes. She didn't make the notes.

4 THE COURT: So what?

5 MS. HOLLOWAY: She understands what they mean.
6 This is a notation she's familiar with.

7 MR. HARVIS: We'll stipulate it was a 30.30
8 dismissal.

9 MS. HOLLOWAY: We asked them to stipulate it was
10 dismissed, no corroborating affidavit --

11 THE COURT: Don't talk at the same time, please.

12 What's your objection?

13 MR. BROOKS: My objection is her reading the notes
14 from this document.

15 THE COURT: Why is it impermissible?

16 MR. BROOKS: No personal knowledge what those notes
17 mean.

18 THE COURT: This is her file?

19 MR. BROOKS: She didn't create it, the criminal
20 court created it.

21 THE COURT: Objection overruled.

22 (Continued on next page.)

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1 (Open court.)

2 THE COURT: That's received, 6-B.

3 (So marked.) Go ahead.

4 Q Is this your handwriting on this document, Ms. Ricks?

5 A No.

6 Q Do you have an understanding of whose handwriting it is?

7 A Yes.

8 Q Whose handwriting is on this document?

9 A For each respective date, it's the judge that was
10 presiding at that particular appearance.

11 Q Your understanding the judge taking notes based on the
12 appearance?

13 A Yes, the record made on that given date.

14 Q Do each of these rows you see on this exhibit relate to
15 an appearance date?

16 A Yes.

17 THE COURT: Do you have a lot of cases?

18 THE WITNESS: Yes.

19 THE COURT: Hundreds?

20 THE WITNESS: I would definitely say close to 100.

21 THE COURT: Is it possible for you to remember all
22 the things about all your cases that happen in court?

23 THE WITNESS: Each and every specific case, no.

24 THE COURT: Do you use notes like this from your
25 file to keep track of what happened in your cases?

1 THE WITNESS: I do, yes.

2 THE COURT: Go ahead.

3 Q If we could turn to the second page of this exhibit,
4 NYC-22, the bottom right-hand corner. You see the top box,
5 Ms. Ricks?

6 A Yes.

7 Q Does that row relate to a specific person's date?

8 A Yes.

9 Q What appearance date was that?

10 A June 22nd of 2006.

11 Q You see the notation in the large box, it says no corrob
12 or lab, is that a notation that means something to you?

13 A Yes.

14 Q What does it mean?

15 A No corrob means the district attorney's office had not
16 provided a corroborating affidavit to support the allegations
17 that were listed in the complaint, and with respect to the
18 lab, that the district attorney's office had not provided by
19 way of the police department the lab report with respect to
20 the item that the complaint named was recovered from my
21 client.

22 Q Is that your recollection of what occurred on the
23 appearance date, June 22nd, 2006?

24 A Yes.

25 Q If you could look at the next row, does that row also

1 relate to a specific appearance date?

2 A Yes, it does.

3 Q What appearance date is that?

4 A July 17th, 2006.

5 Q The notation in that box, it says, I think. DIFM and
6 sealed, does that mean something to you?

7 A Yes.

8 Q What does that mean?

9 A It means that particular docket on July 17th, 2006 was
10 dismissed and sealed by the court. The District Attorney's
11 Office had not converted their complaint into a valid or
12 sufficient information in order to proceed with that matter in
13 court within the statutory time period.

14 Q In this case did you move to have the complaint
15 dismissed?

16 A Yes, I did, pursuant to the criminal procedure law
17 section 3030 which is what's indicated in the notation.

18 Q On what grounds did you move that it should be dismissed
19 personally to 3030?

20 A Because the criminal procedure law governs the way in
21 which the cases that are brought before a criminal court judge
22 can actually proceed. When a complaint is brought for what
23 would be considered a misdemeanor charge, then the District
24 Attorney's Office by statute has 90 days from the date of
25 arraignment. In this case, 90 days from April 16th of 2006,

1 the arraignment being the first date that Mr. Robertson was
2 before the court on those charges, if the district attorney
3 does not change those allegations by way of having a
4 supporting deposition or a corroborating affidavit from the
5 complainants, here the New York State Police Department, if
6 they do not have an affidavit by those officers that says
7 whatever we're alleging in this complaint is true and there's
8 no hearsay, then the matter has to be dismissed within
9 90 days.

10 Q A moment ago we looked at the complaint in this case. Is
11 this not a corroborating affidavit?

12 A No, it's not. It's just a mere complaint which is a
13 piece of paper that alleges something that a person may or may
14 not have done.

15 Q Is this complaint signed by the complaining officers?

16 A No. The actual complaint was drafted by a paralegal in
17 the District Attorney's Office, Ms. Woods. It was drafted
18 based upon what is alleged to have been mentioned to her by
19 the Police Officers Sullivan and Prince.

20 Q If we could turn back once more to Plaintiff's
21 Exhibit 6-B, the second page -- actually, the first page, the
22 third row, can you read the notes and what do they say in the
23 big box?

24 A Defendant in and produced, warrant vacated and expunged.
25 Defendant incarcerated on date of -- looks like May 5th.

1 Q Do you have any recollection of whether Mr. Robertson was
2 incarcerated on May 5th?

3 A Yes.

4 Q What's your recollection about that incarceration?

5 A As a result of the April 16th arrest, my client was
6 violated by the Department of Parole. When the case was
7 arraigned on April 16th, he was released on his own
8 recognizance. Because the case was brought before the court,
9 his parole was violated and he was then subsequently put in
10 jail or incarcerated. When the case was on May 2nd, that's
11 when Mr. Robertson was put in.

12 Q I would like to mark --

13 THE COURT: Could you go back to that, please, back
14 to that exhibit you just had on the screen? Please enlarge
15 that third box. Does that say incarcerated on other matter on
16 5-5.

17 THE WITNESS: No, it looks like on the date.

18 THE COURT: Is your testimony that he was
19 incarcerated in connection with the violation proceeding that
20 was brought?

21 THE WITNESS: Exactly.

22 MS. HOLLOWAY: I would like to mark for
23 identification, show the witness Plaintiff's Exhibit 42?

24 Q Ms. Ricks, do you recognize this document?

25 A Yes.

1 Q Have you seen it before?

2 A I have.

3 Q What is it?

4 A The transcript from July 17th, 2006 proceedings.

5 Q Does this transcript conform with your recollection of
6 what occurred during the July 17th, 2006 proceeding?

7 A Yes.

8 MS. HOLLOWAY: I would like to move this document
9 into evidence.

10 THE COURT: Any objection?

11 MR. BROOKS: Objection.

12 THE COURT: How many pages is it?

13 MS. HOLLOWAY: Four.

14 THE COURT: Could you hand it up and I'll take a
15 quick look at it?

16 (Pause.)

17 THE COURT: Basics?

18 MR. BROOKS: Out-of-court statements. We've had no
19 opportunity to cross examine any of these witnesses.

20 (Pause.)

21 THE COURT: No, I'll allow it. You can cross
22 Ms. Ricks, of course. I understand your objection to the
23 other statements, but the other statements are by the court
24 and let me explain to you the purpose, the context in which
25 this evidence is being received.

1 One of the claims asserted by the plaintiff is that
2 he was subjected to a malicious prosecution. One of the
3 ingredients of that claim -- there are some other elements as
4 well, for example, absence of probable cause, actual malice,
5 but the element of that claim to which this evidence relates
6 most directly is the requirement that the plaintiff prove that
7 the prosecution he complains about was terminated favorably to
8 him. He got a favorable termination of this claim that was
9 brought in state court in which he was represented by
10 Ms. Ricks.

11 This is the termination, this court proceeding
12 memorialized as the judge's dismissal of the case. For that
13 reason, it lays at the heart of the plaintiff's effort. He
14 was then a defendant. He's now the plaintiff. It's an effort
15 to prove his claim because the statements of the judge bear on
16 whether or not this was a favorable termination. I'm going to
17 allow it in. You'll consider it to that end. The objection
18 is overruled. It's received.

19 (So marked.)

20

21

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1 EXAMINATION CONTINUES

2 BY MR. HOLLOWAY:

3 Q I would like to direct your attention, Ms. Ricks, to page
4 three, line 18 through 20 of the transcript.

5 The second sentence is definitely past 30.30.

6 Do you have an understanding of what that means?

7 A Yes. There was argument made by myself on July 17th that
8 the case should have been dismissed because the District
9 Attorney had not provided the Court or myself with the
10 necessary corroborating affidavits or the lab. The
11 calculation by statute under article 30.30 of the criminal
12 procedure law, Section 1(b), as in boy, indicates that on a
13 misdemeanor charge, the District Attorney has 90 days or three
14 months in order to provide that information. Therefore, being
15 ready to proceed in trial or it has to be dismissed. The
16 calculation was that it was over or past the 90-day time
17 period as they had not provided the necessary documents to
18 show reasonable cause to continue with their case, it was
19 therefore dismissed.

20 Q After a case has been dismissed pursuant to 30.30, does
21 it get sealed?

22 A Yes.

23 Q Was this case sealed?

24 A It was.

25 Q What does that mean?

1 A It means that it cannot be reentered into or reopened or
2 any of the allegations that were brought under that particular
3 docket unless there is a court order. It is as if it never
4 occurred.

5 Q The charges then are completely dismissed?

6 A Yes, ma'am.

7 MS. HOLLOWAY: Thank you.

8 I have no more questions, Your Honor.

9 THE COURT: All right. Thank you, Ms. Holloway.

10 Mr. Brooks, would you care to cross this witness?

11 MR. BROOKS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. BROOKS:

14 Q Good afternoon, Ms. Ricks.

15 A Good afternoon.

16 Q My name is Jeffrey Brooks. I represent the defendants in
17 this action.

18 Ms. Ricks, you are testifying here in response to a
19 subpoena, is that correct?

20 A Yes.

21 Q Did you receive a witness fee in the amount of \$40?

22 A No, I have not.

23 Q Did you receive any compensation for being here today?

24 A No, none at all.

25 Q You are testifying here in your capacity as one of

1 Mr. Robertson's criminal defense attorneys, is that correct?

2 A Yes.

3 Q You are an attorney with the Legal Aid Society; is that
4 correct?

5 A I am.

6 Q The People of the State of New York were represented in
7 Mr. Robertson's criminal case by the Kings County District
8 Attorney; is that correct?

9 A Yes.

10 Q The Kings County District Attorney filed the criminal
11 charges against Mr. Robertson, right?

12 A Yes.

13 Q After an accusatory instrument is filed, the criminal
14 defendant has to appear at an arraignment, is that correct?

15 A Yes.

16 Q You were not Mr. Robertson's criminal defense attorney at
17 that arraignment, is that correct?

18 A No. My colleague was.

19 Q So you weren't there at all, correct?

20 A No, not on the 16th.

21 Q So you have no knowledge of anything that occurred at the
22 arraignment, correct.

23 A Incorrect. I do have knowledge of what occurred there.

24 Q That knowledge is simply that Mr. Robertson was
25 arraigned?

1 A Not simply that he was arraigned. But he was in fact
2 arraigned, yes.

3 Q You became Mr. Robertson's criminal defense attorney with
4 the charges from his April 16, 2006 arrest only after that
5 case was combined with another criminal case, is that correct?

6 A It wasn't combined with another criminal court case.

7 MR. BROOKS: Your Honor, I am going to show the
8 witness a document to hopefully refresh her recollection. I
9 need just a moment to find the right page. This document was
10 provided to plaintiff. I don't know whether they have given
11 it an exhibit number at this time.

12 MS. HOLLOWAY: We have not, Your Honor.

13 (Pause.)

14 Q I am first going to show you the cover page of this
15 document. It will demonstrate to you the date. I want to
16 point it out to you.

17 A Yes.

18 Q Okay. I am going to show you the second page of this
19 document. I will just have you read the section to yourself.

20 (Pause.)

21 Let me know when you are done.

22 A I am done.

23 Q Does that document refresh your recollection that
24 Mr. Robertson's April 15th arrest was combined with an earlier
25 arrest?

1 A No, it wasn't combined. One case was put on the same
2 date that another case was already pending.

3 Q Okay. That separate case against Mr. Robertson was
4 pending in Brooklyn's Domestic Violence court?

5 A In DV-1, yes.

6 Q Mr. Robertson was on parole when he was arrested on
7 April 14th, 2006, correct?

8 A Yes.

9 Q Mr. Robertson was also on parole while he was arrested on
10 the charges in the separate case that was already pending in
11 DV-1, correct?

12 A Yes.

13 Q Ms. Ricks, I am going to show you what has previously
14 been marked as Plaintiff's 6-A. This document is in evidence,
15 if I can find it.

16 Ms. Ricks, you testified earlier that you recognize
17 this document, correct?

18 A I do.

19 Q You didn't write any of this document though, correct?

20 A No.

21 Q You were not present when any of this document was
22 written, correct?

23 A No.

24 Q You were not present when any of the information
25 contained in this document was provided to the person who did

1 write this document, correct?

2 A No.

3 Q You have never discussed the creation of this document
4 with anyone from the Kings County District Attorney's office,
5 correct?

6 A I don't understand your question.

7 Q I will rephrase it.

8 You don't know why the Kings County District
9 Attorney's office chose to file these particular charges
10 against Mr. Robertson, correct?

11 A No.

12 Q Okay. That's the sole decision of the Kings County
13 District Attorney's office, correct?

14 A Not entirely, Mr. Brooks. The reason the Kings County
15 District Attorney filed these charges against Mr. Robertson is
16 because Police Officers Sullivan and Prince made
17 representations to the paralegal of the Kings County District
18 Attorney's office and that's why the complaint was filed.

19 Q The District Attorney is the one who ultimately decides
20 to file the charges, correct?

21 A Yes, based upon what the police or the complainant says.

22 Q Okay. Ms. Ricks, you earlier discussed New York Criminal
23 Procedure Law Section 30.30 on your direct examination,
24 correct?

25 A Yes.

1 Q Section 30.30 requires the District Attorney to have a
2 criminal case ready for trial within a certain time period,
3 correct?

4 A Yes.

5 Q If a criminal case is not ready within that time period,
6 it has to be dismissed, correct?

7 A Right.

8 Q To your knowledge, a case getting dismissed under 30.30
9 might mean the District Attorney just ran out of time to
10 prosecute it, correct?

11 A I don't know that that's what it would mean. I just know
12 that the District Attorney had not done what needed to have
13 been done by statute. The case was dismissed.

14 Q Okay. Like yourself, Kings County District Attorney
15 might have more cases to prosecute than it can handle,
16 correct?

17 A I don't know what they have. But they do have a lot of
18 cases, yes.

19 Q Okay. A 30.30 dismissal doesn't necessarily have
20 anything to do with an accused's innocence, correct?

21 A That's actually not necessarily true, Mr. Brooks.

22 Q The fact that it was dismissed pursuant to 30.30 just
23 means the District Attorney ran out of time, right?

24 MS. HOLLOWAY: Objection, Your Honor.

25 A No.

1 THE COURT: Overruled.

2 Let her answer.

3 A No, it doesn't mean that the District Attorney ran out of
4 time. It means that the District Attorney failed to do what
5 was needed within the amount of time in order for the case to
6 proceed.

7 Q Charges can be dismissed on 30.30 grounds even if a
8 person might be guilty of the crimes, correct?

9 A I don't know about whether or not a person would be
10 guilty of the charge. What I do know is that the statute in
11 and of itself dictates if the District Attorney does not do
12 something within a particular time period, then the case must
13 be dismissed, yes.

14 Q It is possible for the District Attorney to have probable
15 cause to prosecute a case but then the case just gets
16 dismissed on 30.30 grounds?

17 A No. The law says that in order to have reasonable cause,
18 you have to have a corroborating affidavit and here in this
19 case a lab in order to be able to move forward because the
20 complaint was not then sufficient without that.

21 Q You don't know the actual reason the District Attorney
22 wasn't ready to proceed with this case, correct?

23 A The reason I know is that the District Attorney had not
24 provided myself as counsel or the Court a corroborating
25 affidavit by the complainants, here Officers Sullivan and

1 Prince, nor had they provided the lab report relative to the
2 charges in the complaint.

3 Q You don't know why the district attorney didn't do
4 anything, correct?

5 A No.

6 Q You can only therefore guess, correct?

7 A I wouldn't even venture to guess.

8 Q Okay. You also don't know that the April 14th arrest was
9 the only reason for Mr. Robertson's parole getting violated,
10 is that correct?

11 A I had communication with the parole attorney and that was
12 the information that was given to me, it was as a result of
13 the April 15th arrest.

14 Q The sole reason?

15 A As far as I recall, yes.

16 Q Mr. Robertson's parole was violated, correct?

17 A Yes.

18 Q That's a decision of the New York Board of Parole,
19 correct?

20 A Yes. The Division of Parole, yes.

21 Q Right.

22 Isn't it possible that the only reason the District
23 Attorney didn't continue prosecuting this case was that
24 Mr. Robertson was already going to -- going back to prison for
25 violating his parole?

1 A Not at all.

2 MS. HOLLOWAY: Objection.

3 THE COURT: Sustained.

4 Q Again, aside from the fact that the grounds of the
5 dismissal was Section 30.30, you have no idea whatsoever why
6 the DA allowed the case to be dismissed, correct?

7 A The reason the District Attorney had the case dismissed
8 was that they failed to provide the necessary documents needed
9 in order to continue with the case and therefore provide
10 reasonable cause that my client actually committed the
11 allegations that were alleged in the complaint.

12 Q Ms. Ricks, a parole warrant was issued for
13 Mr. Robertson's arrest on April 24, 2006, correct?

14 A I don't know when the warrant was issued. I just know
15 that he was picked up subsequently by parole.

16 Q Okay. Mr. Robertson was taken into custody based on that
17 warrant, correct?

18 A Yes, sir.

19 Q So his being taken into custody was based on that warrant
20 and not based on his April 14, 2006, arrest?

21 A No. Based upon my communication, it was my understanding
22 that it was as a result of the arrest from the April 15th
23 matter. That he was then placed in custody.

24 Q You weren't present for any of the discussions regarding
25 the violation of his parole, correct?

1 A Not at the parole proceeding, no.

2 Q So you don't actually know the reasons why his parole was
3 violated?

4 A Based upon my recollection and my communication with the
5 parole attorney that was present, that's the basis I have.

6 MR. BROOKS: Okay. I have nothing further, Your
7 Honor.

8 THE COURT: Thank you, Mr. Brooks.

9 There is nothing further, is there?

10 MS. HOLLOWAY: Nothing further.

11 THE COURT: You are excused. Have a good day,
12 Ms. Ricks.

13 THE WITNESS: Thank you, sir.

14 (Witness excused.)

15 THE COURT: Call your next witness.

16 MS. HOLLOWAY: Your Honor, we have no other
17 witnesses. But we do have some documents that we would like
18 to offer into evidence. There are a number for which
19 defendants don't have any objection.

20 THE COURT: Okay.

21 MS. HOLLOWAY: There is just one matter about the
22 photographs.

23 THE COURT: Yes.

24 MS. HOLLOWAY: We would like to call, to the extent
25 the defendants are going to continue to object to the -- to

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1 the extent the defendants are not willing to stipulate to the
2 location of the -- our photograph exhibits which are PX-29
3 through 39.

4 THE COURT: These are photographs?

5 MS. HOLLOWAY: They are photographs of various parts
6 of the scene at the corner of --

7 THE COURT: Would you prefer a foundation to be
8 laid?

9 MR. HARVIS: No. We are prepared to stipulate as to
10 PX-33. As to the other ones, we would require a foundation.

11 THE COURT: All right. Call your witness.

12 MS. HOLLOWAY: I would like to call Eleanor Dorfman.

13 THE COURT: Ms. Holloway, have a seat while the
14 witness is sworn, please.

15 Please swear the witness.

16 THE CLERK: Yes, Your Honor.

17 (The witness is duly sworn/affirmed by the clerk.)

18 THE CLERK: Please be seated.

19 Please state and spell your name for the record.

20 THE WITNESS: My name is Eleanor Dorfman,
21 E L E A N O R, D O R F M A N.

22 DIRECT EXAMINATION

23 BY MR. HOLLOWAY:

24 Q Good morning, Ms. Dorfman.

25 A Good morning.

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1 Q Are you currently employed?

2 A I am.

3 Q What is your job?

4 A I am a paralegal at Cravath, Swaine and Moore.

5 Q Have you had the opportunity before your testimony this
6 morning to review the documents that have been previously
7 marked Plaintiff Exhibits 30 through 39?

8 A I have.

9 MS. HOLLOWAY: I would like to mark these exhibits
10 as a group for identification.

11 THE COURT: Okay.

12 Q Ms. Dorfman, were you present when these photographs were
13 taken?

14 A I was.

15 Q When were they taken?

16 A February 4th, around noon.

17 Q I would like to show the witness.

18 THE COURT: Go right ahead.

19 MS. HOLLOWAY: Exhibit 30.

20 Q Ms. Dorfman, do you recognize the scene depicted in this
21 photograph?

22 A I do.

23 Q Where is it?

24 A It's the southeast corner of Pithkin Avenue and Williams
25 Avenue in Brooklyn. It's I believe on Pithkin Avenue.

1 MS. HOLLOWAY: Thank you.

2 I would like to offer this document into evidence?

3 THE COURT: It doesn't look like a corner to me. It
4 looks like a storm drain. Is that where the storm drain is?

5 THE WITNESS: Yes. It is a couple of feet past the
6 southeast corner.

7 THE COURT: It's on Pitkin?

8 THE WITNESS: Yes.

9 THE COURT: All right. Any objection?

10 MR. BROOKS: We do object to the introduction of
11 this document.

12 THE COURT: On what ground?

13 MR. BROOKS: The fact that it isn't necessarily the
14 storm drain that any evidence was recovered from.

15 THE COURT: Understood. It goes to the weight of
16 the evidence. Not its admissibility.

17 Overruled.

18 Received.

19 (Marked.)

20 MS. HOLLOWAY: I have marked for identification
21 Plaintiff's Exhibit 31. I will show it to the witness.

22 MR. BROOKS: In light of Your Honor's ruling, we
23 have no objection to any of the other photographs.

24 THE COURT: All right. You can argue the weight of
25 these obviously to the jury. You are not precluded from doing

1 that.

2 Just walk through it. There is no objection.

3 31 is received.

4 Have Ms. Dorfman describe briefly what's in these
5 photographs.

6 THE WITNESS: This is a photo of the southeast
7 corner of Pitkin and Williams and it is taken from Williams
8 Avenue.

9 THE COURT: From where?

10 THE WITNESS: From Williams.

11 THE COURT: That's 31.

12 Received.

13 Go ahead.

14 32 is received.

15 (Marked.)

16 Q Can you describe the scene, Ms. Dorfman?

17 A Yes. This is a photo taken from Pitkin Avenue, taken
18 from Alabama, which is further west, and it is looking down
19 Pitkin Avenue.

20 Q Which --

21 A It is looking west down Pitkin Avenue.

22 THE COURT: Received.

23 (Marked.)

24 Q Looking west on Pitkin Avenue from Alabama toward
25 Williams?

1 A Yes.

2 This is from the same vantage point, just taken
3 further into the middle of the intersection.

4 THE COURT: We are now looking at 33?

5 MS. HOLLOWAY: We are.

6 THE COURT: Plaintiff's 33.

7 MS. HOLLOWAY: This is Plaintiff's 33. It's already
8 in evidence.

9 THE COURT: All right.

10 Q And Plaintiff's Exhibit 34?

11 THE COURT: Received.

12 (Marked.)

13 Q Can you describe the scene?

14 A Yes. This is taken from Pitkin Avenue. It is a photo of
15 southeast corner of Pitkin and Williams.

16 Q Plaintiff's Exhibit 35?

17 THE COURT: Received.

18 (Marked.)

19 A This is taken from the middle of the intersection. It's
20 another photo of the southeast corner of Pitkin and Williams.

21 Q Plaintiff's Exhibit 36?

22 A This photo was taken from Williams Avenue and it is
23 another photo of the southeast corner of Pitkin and Williams.

24 THE COURT: Received.

25 (So marked.)

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1 THE COURT: When were these taken?

2 THE WITNESS: February 4th.

3 THE COURT: Of this year?

4 THE WITNESS: Of 2010, yes.

5 THE COURT: The only day in February it wasn't
6 snowing.

7 Q Speaking of which, there is some snow in this photograph.

8 Plaintiff's Exhibit 37?

9 THE COURT: Received.

10 A This is a photo of a storm drain on the east side of
11 Williams Avenue.

12 (So marked.)

13 Q Is it near the corner of Pitkin and Williams?

14 A Yes.

15 Q About how far away from the corner of Pitkin and Williams
16 is the storm drain?

17 A A couple of feet.

18 Q Plaintiff's Exhibit 38?

19 THE COURT: 38 is received.

20 (So marked.)

21 A This is a photo of Williams Avenue taken from the
22 southeast corner, the middle of the intersection.

23 Q Which direction is this looking on Williams Avenue?

24 A South.

25 Q Thank you.

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1 I have one final photograph.

2 THE COURT: 39?

3 MS. HOLLOWAY: 39.

4 THE COURT: It is received.

5 (So marked.)

6 A This is a close-up of the storm drain on the east side of
7 Williams Avenue.

8 Q Is that the storm drain that was in the photo that has
9 been marked Plaintiff's Exhibit 37?

10 A Yes.

11 THE COURT: Can you put that up for one second?

12 MS. HOLLOWAY: Yes.

13 THE COURT: Is that inside the storm drain?

14 THE WITNESS: Yes.

15 THE COURT: I see. What did you do, hold the camera
16 inside the opening to it and shoot it down?

17 THE WITNESS: Mr. Valdes did, yes.

18 THE COURT: All right.

19 MS. HOLLOWAY: If Your Honor would like to clarify,
20 this is Plaintiff's Exhibit 37. This photo was taken from --
21 from looking down at the storm drain here, correct?

22 THE WITNESS: Correct.

23 MS. HOLLOWAY: Thank you.

24 MR. GOLD: Just for the record, Your Honor, I am not
25 sure that 29 and 30 actually were actually received.

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1 MS. HOLLOWAY: Okay.

2 THE COURT: Are there other photos?

3 MS. HOLLOWAY: This was -- 29 is the map, which I --
4 this is Plaintiff's Exhibit 30.

5 THE WITNESS: Which is the storm drain on Pitkin
6 Avenue.

7 THE COURT: That's received.

8 (Marked.)

9 MS. HOLLOWAY: Finally, there are no more photos,
10 but Plaintiff's Exhibit 29, which I can show to the witness.

11 Q Ms. Dorfman, do you recognize this document?

12 A I do.

13 Q What is it?

14 A It's a Google map's image showing the intersection of
15 Williams and Pitkin Avenue.

16 Q Did you create this Google map image?

17 A I did.

18 MS. HOLLOWAY: I offer this into evidence.

19 THE COURT: You downloaded this off the Google map
20 site?

21 THE WITNESS: Yes.

22 THE COURT: Any objection?

23 MR. BROOKS: No objection.

24 THE COURT: Received.

25 (29 is received in evidence.)

1 THE COURT: 29.

2 Is that it?

3 MS. HOLLOWAY: That's it for Ms. Dorfman.

4 THE COURT: Any cross?

5 MR. BROOKS: No, Your Honor.

6 THE COURT: You can step down.

7 Thank you.

8 (Witness excused.)

9 THE COURT: Did you have other documents you were
10 going to offer in evidence or is that it?

11 MS. HOLLOWAY: I do.

12 MR. VALDES: Your Honor, this is a document that's
13 been premarked Plaintiff's Exhibit 20.

14 THE COURT: Is there any objection to any of these?

15 MR. HARVIS: We don't know what all of them are, but
16 not to this one, Your Honor.

17 THE COURT: Any objection to 20?

18 MR. HARVIS: No.

19 THE COURT: Received.

20 (So marked.)

21 MR. VALDES: Your Honor, this is a document that has
22 been premarked as Plaintiff's Exhibit 7. We would like to
23 offer it into evidence as well.

24 THE COURT: This is a certificate of disposition of
25 the criminal case?

1 MR. VALDES: Exactly, Your Honor.

2 THE COURT: Any objection?

3 MR. BROOKS: No objection, Your Honor.

4 THE COURT: Received.

5 (So marked.)

6 MR. VALDES: This is a document that has been
7 premarked Plaintiff's Exhibit 28 that we would like to offer
8 into evidence as well.

9 THE COURT: What is this? Declaration of Detective
10 Prince?

11 MR. VALDES: Yes. It was a declaration submitted
12 with the defendant's summary judgment papers.

13 THE COURT: All right. Any objection?

14 MR. BROOKS: Your Honor, it's a three-page document,
15 but we have no objection, other than it is cumulative of
16 Detective Prince's testimony.

17 THE COURT: Overruled.

18 Received.

19 (So marked.)

20 MR. VALDES: Your Honor, this is an exhibit, a
21 portion of Defendant's Exhibit X that the defendants had used
22 yesterday. They had placed a Post-it note on a portion. We
23 are now offering this into evidence.

24 THE COURT: Didn't I receive this yesterday?

25 MR. HARVIS: You did. I think just put the word

1 redacted over where the Post-It note was.

2 THE COURT: Fine. We will obviously substitute it
3 for the exhibit I received yesterday.

4 Do you have many more of these documents?

5 MR. VALDES: I believe two more, Your Honor.

6 THE COURT: All right.

7 MR. VALDES: This also is a -- one page out of
8 Defendant's Exhibit X that we would like to -- we have now
9 marked exhibit -- Defendant's Exhibit X-3. We would like to
10 offer it into evidence.

11 THE COURT: Any objection?

12 MR. HARVIS: No, Your Honor.

13 THE COURT: Received.

14 (Marked.)

15 MR. BROOKS: What is the Bates number on the bottom
16 of that page?

17 MR. VALDES: Bates number on Defendant's Exhibit X-3
18 is DKR-00302.

19 MR. BROOKS: Thank you.

20 MR. VALDES: Finally, this also is a page from
21 Defendant's Exhibit X that we would like to offer into
22 evidence.

23 THE COURT: What's the Bates number on it?

24 MR. VALDES: It's DKR00304.

25 THE COURT: Gentlemen, any objection?

1 MR. HARVIS: No, Your Honor.

2 THE COURT: Received.

3 (So marked.)

4 MR. VALDES: I believe that's --

5 MS. HOLLOWAY: Again, I would like to offer into
6 evidence, Your Honor, the -- what was previously marked as
7 Plaintiff's Exhibit 27, which the transcript -- the transcript
8 from Plaintiff Robertson's April 16, 2006 arraignment.

9 THE COURT: Any objection?

10 MR. HARVIS: Yes, Your Honor.

11 THE COURT: Sustained.

12 MR. HARVIS: Thank you.

13 MS. HOLLOWAY: Nothing further.

14 THE COURT: All right. Anything further from the
15 plaintiff or does the plaintiff rest?

16 MS. HOLLOWAY: The plaintiff rests, Your Honor.

17 THE COURT: All right. Let me see counsel at
18 sidebar, please.

19 (Sidebar.)

20 THE COURT: Okay. Any motions?

21 MR. BROOKS: Your Honor, we do have a partial Rule
22 50 motion. First on the malicious prosecution point. There
23 has been no demonstration that the police officers initiated
24 the prosecution as required by Cooke v. Sheldon at 41 F.3d 73.
25 They didn't prepare or sign the accusatory instrument and

1 there is no evidence that the officers encouraged the
2 prosecution to go forward.

3 Separate and apart from that, there is absolutely no
4 evidence of any personal involvement by Sergeant Degl as or
5 Detective Prince in initiating the prosecution against
6 Mr. Robertson.

7 THE COURT: Who called the paralegal?

8 MR. BROOKS: Detective Sullivan.

9 THE COURT: Okay.

10 MR. BROOKS: I think the paralegal called him
11 actually.

12 THE COURT: Right. So you are off the hook from
13 malicious prosecution even if you maliciously and falsely talk
14 to the DA and give him the information they need for a charge?

15 MR. BROOKS: Your Honor, Cooke v. Sheldon requires
16 the officer sign the accusatory instrument which was not done
17 here.

18 THE COURT: The answer is yes? As long as they
19 don't sign it, as long as they get the paralegal to sign it,
20 they can falsely and maliciously provide information that will
21 get somebody jailed, in some case for years?

22 MR. BROOKS: The District Attorney probably has an
23 obligation to investigate that sort of testimony before they
24 swear out a statement.

25 THE COURT: If you are right about that, we will --

1 it will work itself out post-verdict. I am not going to
2 dismiss on that ground.

3 What is your answer to the personal involvement of
4 the other two defendants?

5 MS. HOLLOWAY: Officer Prince also is -- provided
6 information to paralegal Woods as per the accusatory
7 instrument. Says she was informed by declarant Prince and
8 there are statements made in the -- in that instrument, that
9 she obtained some information from Officer Prince about the
10 facts relating to the incident upon which the accusatory
11 instrument was based.

12 THE COURT: What about Degl as?

13 MS. HOLLOWAY: With regard --

14 THE COURT: Excuse me. Who was in charge?

15 MR. HARVIE: Charge of what?

16 THE COURT: These three guys that night.

17 MS. HOLLOWAY: Degl as.

18 MR. HARVIE: Degl as was the supervisor.

19 THE COURT: I am going to deny the motion. We can
20 sort it out post-verdict if you get an adverse verdict on the
21 malicious prosecution.

22 Any other?

23 MR. BROOKS: The failure to intervene claim. There
24 is no testimony that has been offered that any of the officers
25 had a reasonable time to intervene as required by cases like

1 Jean-Laurent versus Wilkinson and it is at 540 F. Supp 2d,
2 501.

3 THE COURT: Okay. Denied.

4 MR. BROOKS: Finally, Your Honor, we would also move
5 on qualified immunity grounds for all three officers as to the
6 unreasonable stop and the malicious prosecution.

7 THE COURT: All right. That's inextricably bound up
8 in the facts of the case. It doesn't seem to me appropriate
9 to grant that as a matter of law.

10 Your motion is denied.

11 Are you ready with your defense case?

12 MR. HARVIS: We are, yes.

13 THE COURT: Let's go.

14 MR. HARVIS: Your Honor, the -- a bathroom break,
15 Your Honor?

16 THE COURT: You can't go ten minutes?

17 MR. HARVIS: Sure.

18 (In open court.)

19 THE COURT: Okay. We are at the point I said we'd
20 get to, where the plaintiff has rested his case. Now the
21 defendants have an opportunity to present evidence in defense
22 of the claims, which we will start right now.

23 Call your next witness, Mr. Brooks.

24 MR. BROOKS: Your Honor, the defendants call
25 Detective Niles Prince to the stand.

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1 THE COURT: Come on up, Detective Prince.

2 Be seated while your witness is sworn, Mr. Brooks.

3 THE CLERK: Please raise your right hand.

4 (The witness is duly sworn/affirmed by the clerk.)

5 THE CLERK: Please be seated.

6 Please state and spell your name.

7 THE WITNESS: Detective Niles Prince, N I L E S,

8 P R I N C E.

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 THE COURT: All right, Mr. Brooks.

12 Q Good afternoon, Detective Prince.

13 A Good afternoon.

14 Q Detective Prince, are you currently employed?

15 A Yes.

16 Q Who are you employed by?

17 A New York City Police Department.

18 Q How long have you been employed by the New York City
19 Police Department?

20 A A little over six years.

21 Q Prior to joining the NYPD, who were you employed by?

22 A United States Marine Corps.

23 Q How long were you in the Marine Corps for?

24 A Five years and six months.

25 Q You were eventually discharged from the Marines, is that

Prince-rect-Brooks

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1 correct?

2 A Yes.

3 Q What type of discharge did you receive from the Marine
4 Corps?

5 A Honorably.

6 Q At the time of your discharge, what rank did you hold?

7 A Sergeant.

8 Q Sergeant is a rank you are promoted to in the Marines; is
9 that correct?

10 A Yes.

11 Q Turning back to your experience with the NYPD, what is
12 your current rank?

13 A Detective.

14 Q When were you promoted to the rank of detective?

15 A October 2008.

16 Q Prior to October of 2008, you were a police officer,
17 correct?

18 A Yes.

19 Q How long were you a police officer for?

20 A A little over three years.

21 Q Where are you currently assigned as a detective?

22 A Manhattan North Vice OCCB.

23 Q What does OCCB stand for?

24 A Organized Crime Control Bureau.

25 Q Briefly, what are your duties as a detective in Manhattan

Prince-rect-Brooks

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1 North Vice?

2 A To investigate public moral crimes, prostitution, money
3 laundering and gangs.

4 Q Detective Prince, I am going to focus your attention now
5 on April 14, 2006.

6 On April 14, 2006, what rank did you hold?

7 A Police officer.

8 Q Do you remember the events of that day and night?

9 A Yes.

10 Q Were you working on April 14th, 2006?

11 A Yes.

12 Q What command were you assigned to within the NYPD?

13 A 75th Precinct.

14 Q Were you assigned to a particular unit within the 75th
15 Precinct?

16 A Yes.

17 Q What unit was that?

18 A Anti crime.

19 Q Briefly, what were your responsibilities as a police
20 officer in the Anti crime Unit of the 75th Precinct in April of
21 2006?

22 A My duties were to address specific violent crimes within
23 the precinct, robbery, burglaries and criminal possession of a
24 weapon.

25 Q Where is the 75th Precinct located?

Prince-direct-Brooks

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1 A In East New York, Brooklyn, 1000 Sutter Avenue.

2 THE COURT: Hold on one second. Let me position the
3 microphone so we can hear you a little better.

4 THE WITNESS: Sorry.

5 Q What hours did you work on April 14, 2006?

6 A 1730 by 0205.

7 Q In layman's terms, what does that mean?

8 A 5:30 pm by 0205 am.

9 Q What were you wearing on the evening of April 14, 2006?

10 A Plain clothes.

11 Q What are plain clothes?

12 A Jeans, boots and a shirt.

13 Q Why were you wearing plain clothes that evening?

14 A Because Anti crime is a plain clothes unit.

15 Q Were you wearing anything that identified you as a police
16 officer?

17 A Yes.

18 Q What were you wearing?

19 A My shield and possibly a raid jacket.

20 Q What is a raid jacket?

21 A A raid jacket is a windbreaker that has the lettering
22 NYPD on the back and two -- one NYPD patch on each arm.

23 Q Where were you wearing your shield?

24 A Around my neck.

25 Q What is a shield?

Prince-direct-Brooks

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1 A A shield is a silver object with numbers along the
2 bottom and New York City Police Officer along the outside of
3 the shield.

4 Q What was your shield number on April 14, 2006?

5 A 22353.

6 Q What was your assignment on April 14, 2006?

7 A Recorder.

8 Q What does a recorder do?

9 A The recorder generally takes notes.

10 Q Were you required to take any notes that evening?

11 A Yes.

12 Q Okay. Where were you assigned to patrol?

13 A East New York.

14 Q How were you patrolling that evening?

15 A In an unmarked vehicle.

16 Q Who were you on patrol with that night?

17 A Detective Sullivan and Sergeant Deglasi.

18 Q I am going back to your assignment as a recorder.

19 Did you take any notes regarding the arrest of
20 Mr. Robertson?

21 A No.

22 Q Why not?

23 A Because I -- later that evening I went to the hospital
24 because my wrist was swollen and I had injuries to my lower
25 back.

Prince-direct-Brooks

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1 Q Okay. You said you were on patrol with Detective
2 Sullivan, correct?

3 A Yes.

4 Q Do you know what Detective Sullivan's assignment was that
5 night?

6 A He was the operator of the vehicle, the driver.

7 Q Who was your supervisor that night?

8 A Sergeant Degl as.

9 Q Where were you seated in the vehicle?

10 A The passenger side.

11 Q Do you know whether you were in the front or the back?

12 A I believe I was in the rear of the vehicle.

13 Q Okay. Did there come a time where you were patrolling in
14 the vicinity of Pitkin Avenue and Williams Avenue in East
15 New York?

16 A Yes.

17 Q What time was it when you reached the vicinity of Pitkin
18 and Williams?

19 A I don't recall.

20 Q What time of day was it?

21 A Nighttime.

22 Q Which street were you traveling down when you first
23 reached the vicinity of Pitkin and Williams?

24 A I believe Pitkin Avenue.

25 Q Does Pitkin Avenue have one-way traffic or two-way

Prince-direct-Brooks

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1 traffic?

2 A Two-way traffic.

3 Q Could you please describe briefly for the jury what the
4 area was like in the vicinity of Pitkin Avenue and Williams
5 Avenue the night of April 14, 2006?

6 A Yes.

7 Pitkin Avenue was an industrial area with street
8 lights and lights along the buildings.

9 Q Were there any businesses open in the vicinity of Pitkin
10 and Williams?

11 A No.

12 Q How far away is the nearest subway stop in the vicinity
13 of Pitkin and Williams?

14 A I would say, five blocks away.

15 Q In your experience, are there any buses in the vicinity
16 of -- at that time?

17 A No.

18 Q Did there come a time on April 14, 2006, that you became
19 aware of the plaintiff Dwayne Robertson?

20 A Yes.

21 Q What first drew your attention to Mr. Robertson?

22 A The smell of marijuana, and he was actually the only one
23 walking on the street.

24 Q How were you able to smell marijuana that evening?

25 A Because my window was rolled down.

Prince-rect-Brooks

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1 Q Why was your window rolled down that evening?

2 A To help heighten my senses. I could hear things and see
3 things better.

4 Q Had you smelled marijuana before in your work as a police
5 officer?

6 A Yes.

7 Q Approximately how many times?

8 A Over one hundred times.

9 Q Where was Mr. Robertson when you first saw him?

10 A On the sidewalk.

11 Q About how far away was he from you?

12 A Two car lengths away.

13 Q Was Mr. Robertson walking with anyone?

14 A No.

15 Q Was anyone else on the street that evening?

16 A No.

17 Q What did you observe as the car drew closer?

18 A As we positioned the vehicle closer, I observed what I
19 believed at that time to be a marijuana cigarette.

20 Q Could you describe for the jury what that marijuana
21 cigarette looked like?

22 A Yes. It is a -- marijuana cigarettes are wrapped in a
23 cigar-like type paper, brown paper and it is stuffed with
24 marijuana.

25 Q Have you seen a marijuana cigarette similar to that

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1 before in your work as a police officer?

2 A Yes.

3 Q Approximately how many times?

4 A Over 100 times.

5 Q What, if anything, did you say once you smelled and
6 observed the marijuana cigarette?

7 A We then positioned the vehicle closer to defendant to
8 further investigate.

9 Q What happened next?

10 A At that point in time that's when I exited the vehicle
11 and identified myself and the defendant ran.

12 THE COURT: Maybe this is a good time to break.

13 MR. BROOKS: Sure, Your Honor.

14 THE COURT: Let's break for lunch.

15 Don't discuss the case, ladies and gentlemen. We
16 will resume at 2:00 o'clock. All rise.

17 (The following occurred in the absence of the jury.)

18 THE COURT: See you at 2:00 o'clock.

19 (Luncheon recess taken.)

20

21

22

23

24

25

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1 | A F T E R N O O N S E S S I O N

2 THE COURT: Are we ready? Detective Prince, please
3 come back up to the stand.

4 Where is your client, Ms. Holloway?

5 MS. HOLLOWAY: We'll get him.

6 (Pause) .

7 (All parties present.)

8 (Jury enters courtroom.)

11 | CONTINUED DIRECT EXAMINATION

12 BY MR. BROOKS:

13 | Q Good afternoon again, Detective Prince.

14 A Good afternoon.

15 Q When we broke for lunch, you had just testified that you
16 had just stepped out of the car to confront Mr. Robertson?

17 A Yes.

18 Q When you stepped out of the car to confront
19 Mr. Robertson, did you identify yourself as a police officer?

20 A Yes

21 Q Did you identify yourself as a police officer before or
22 after Mr. Robertson ran?

23 A Before he ran

24 Q What was Mr. Robertson carrying when you stepped out of
25 the car?

Prince-rect-Brooks

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1 A What I believed to be a marijuana cigarette.

2 Q What did Mr. Robertson do with the marijuana cigarette
3 when he ran?

4 A He threw it to the ground.

5 Q What did you do when he ran?

6 A I chased him.

7 Q Was that on foot?

8 A Yes.

9 Q Why did you pursue Mr. Robertson on foot?

10 A Because he was running on foot.

11 Q Which way did Mr. Robertson run?

12 A I believe it was southbound on Williams.

13 Q Where was your police vehicle at this point?

14 A Southbound on Williams.

15 Q What did you observe after Mr. Robertson ran around the
16 corner?

17 A I continued to pursue him. The vehicle Detective
18 Sullivan was driving was alongside of us while we were
19 running. He kind of positioned the vehicle to block
20 Mr. Robertson off. At that point in time is when
21 Mr. Robertson all in one single motion turned around, pulled
22 out a black object from his waist band.

23 Q At the point Mr. Robertson drew the object from his
24 waistband, could you tell what that object was?

25 A Not at that time.

Prince-direct-Brooks

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1 Q What did you think that object was?

2 A Possibly a gun.

3 Q Why did you think possibly it was a gun?

4 A Because in my experience, most people pull pistols or
5 guns from the waistband.

6 Q How far was Mr. Robertson away from you when he turned
7 back?

8 A Maybe a car length away.

9 Q How did you feel at that moment?

10 A My safety, my safety was a concern.

11 Q What did Mr. Robertson do with the object he withdrew
12 from his belt?

13 A Threw it.

14 Q Where?

15 A To the ground.

16 Q What did you do after Mr. Robertson turned and withdrew
17 the object from his belt?

18 A I attacked.

19 Q How long was it before his drawing the object you
20 tackling him?

21 A A matter of seconds.

22 Q What kind of weapon did you carry?

23 A Smith and Wesson .9 millimeter.

24 Q Did you draw your pistol?

25 A No.

Prince-rect-Brooks

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1 Q Where was your pistol?

2 A On my right hip, pancake holster, leather holster that's
3 secured by one snap.

4 Q Were you carrying a baton that evening?

5 A No.

6 Q Were you carrying mace that evening?

7 A No.

8 Q Describe for the jury how you tackled Mr. Robertson?

9 A I tackled him like a safety tackler, a quarterback, from
10 his waist.

11 Q Had you drawn your weapon?

12 A No.

13 Q What did Mr. Robertson do after you tackled him?

14 A He resisted arrest.

15 Q How did he resist?

16 A By kicking, punching, flailing his arms.

17 Q Were you on top of Mr. Robertson during the struggle the
18 entire time?

19 A No, we were both rolling on the ground. At one point he
20 was on top of me, then I was on top of him.

21 Q While he was resisting you, could he have gone for your
22 gun?

23 A Yes, easily.

24 Q What did you do to subdue Mr. Robertson?

25 A I placed handcuffs on him.

Prince-rect-Brooks

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1 Q When were you able to place handcuffs on him?

2 A When I received the assistance of my two partners,
3 Sullivan Deglas.

4 Q Prior to their assisting you, what did you do to try to
5 get the situation under control?

6 A I tried to grab his arms to place them behind his back.

7 Q Were you able to do that?

8 A No.

9 Q What, if anything, did you say to Mr. Robertson while you
10 were struggling on the ground?

11 A Stop resisting.

12 Q How many times did you tell him to stop resisting?

13 A Multiple times.

14 Q Did Mr. Robertson comply with those orders?

15 A No.

16 Q What happened after you struggled with Mr. Robertson by
17 yourself on the ground?

18 A We continued to roll around on the ground. I continually
19 tried to reach to grab his arms to place it behind his back.
20 Then seconds went by, that's when the two officers helped me
21 place handcuffs on him.

22 Q How did you learn those two officers had arrived?

23 A I actually saw Detective Sullivan to the opposite side of
24 Dwayne while we were placing handcuffs on him.

25 Q When did you first learn Sergeant Deglas arrived?

Prince-rect-Brooks

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1 A I didn't know he arrived.

2 Q Did you hear Officer Sullivan say anything to
3 Mr. Robertson during the struggle?

4 A Yes.

5 Q What did he say?

6 A Stop resisting.

7 Q Did Mr. Robertson comply with those orders?

8 A No.

9 Q Did you hear Sergeant Degl as say anything during the
10 struggle?

11 A I'm not sure, I don't recall.

12 Q Did you ever see Sergeant Degl as strike Mr. Robertson
13 with a baton?

14 A No.

15 Q Did you ever see Sergeant Degl as strike Mr. Robertson in
16 the head?

17 A No.

18 Q When did you first learn that Sergeant Degl as had used a
19 baton on Mr. Robertson's legs?

20 A During the course of this litigation.

21 Q If someone had struck Mr. Robertson in the head with a
22 baton while you were struggling, would you have been able to
23 see it?

24 A Yes.

25 Q If someone struck Mr. Robertson in the legs with a baton

Prince-direct-Brooks

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1 while you were struggling, would you have been able to see
2 that?

3 A No.

4 Q Did Mr. Robertson eventually stop resisting?

5 A Yes.

6 Q How long after you saw Detective Sullivan was it when
7 Mr. Robertson stopped struggling?

8 A A matter of seconds.

9 Q You testified that you placed Mr. Robertson in handcuffs?

10 A With the assistance of my two partners, yes.

11 Q Took all three of you to handcuff Mr. Robertson?

12 A Yes.

13 Q How long was it from your tackling Mr. Robertson on
14 Williams until his finally being placed in handcuffs?

15 A Not even 60 seconds.

16 Q What did Mr. Robertson do once the handcuffs were on him?

17 A He stopped resisting.

18 Q When the handcuffs were on Mr. Robertson, did you notice
19 any injuries to him?

20 A No, I don't recall.

21 Q Was Mr. Robertson bleeding?

22 A I don't recall.

23 Q Was Mr. Robertson conscious after the struggle?

24 A Yes.

25 Q What did you do once Mr. Robertson was in handcuffs?

Prince-direct-Brooks

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1 A Brought him up to his feet.

2 Q At that point did Mr. Robertson complain of any injuries
3 to you?

4 A No.

5 Q Did Mr. Robertson ever tell you that he had been struck
6 with a baton?

7 A No.

8 Q What was Mr. Robertson's demeanor at this point?

9 A I could smell the stench of marijuana, his eyes were
10 bloodshot red.

11 Q How did you feel after the struggle with Mr. Robertson?

12 A I was sore.

13 Q Did you think you were injured?

14 A Yes.

15 Q Where did you feel sore?

16 A Wrist, lower back.

17 Q Which wrist?

18 A Right wrist.

19 Q What did you do after Mr. Robertson was on his feet?

20 A We then went back to the precinct.

21 Q What happened to the marijuana cigarette that you saw
22 Mr. Robertson smoking?

23 A It wasn't recovered.

24 Q Do you know why it wasn't recovered?

25 A Because it probably burnt out.

Prince-rectangle-Brooks

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1 Q Did you look for it?

2 A No.

3 Q Why not?

4 A Because I was concerned about my injury.

5 Q What happened to the object that you saw Mr. Robertson
6 throw?

7 A It was later recovered and vouchered.

8 Q Did you recover that object?

9 A No.

10 Q Did you eventually learn what that object was?

11 A Yes.

12 Q What was it?

13 A Two gloves stuffed with marijuana, packages of marijuana.

14 Q Did you transfer Mr. Robertson back to the precinct?

15 A I don't recall.

16 Q Did you fill out any arrest paperwork relating to
17 Mr. Robertson?

18 A No.

19 Q Why not?

20 A Because I couldn't write because my right wrist, I went
21 to the hospital to be seen.

22 Q What hospital did you go to?

23 A Jamaica Hospital.

24 Q Why did you go to Jamaica Hospital?

25 A Because that's the hospital I would be going to as police

Prince-rect-Brooks

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1 officers inside the precinct.

2 Q What treatment did you receive at the hospital?

3 A Pain medication, x-ray of my wrist.

4 Q Do you recall what any diagnosis was?

5 A No, I don't recall.

6 Q How long were you at the hospital for?

7 A A few hours.

8 Q Was anyone with you at the hospital?

9 A Yes, but I don't recall who it was.

10 Q Where did you go after you left the hospital?

11 A Back to the precinct.

12 Q Had you ever had to go to the hospital due to an injury
13 that you sustained in the line of duty before?

14 A No.

15 Q Did you have to miss any work as a result of your injury?

16 A No.

17 Q Why not?

18 A Because the next two days I was on my regular days off.

19 Q Did you have to seek any follow-up treatment for the
20 injuries you sustained?

21 A Yes, I went to my primary care physician.

22 Q Did you receive any treatment from your primary care
23 physician?

24 A No.

25 Q Detective Prince, I'm going to show you what's been

Prince-rect-Brooks

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1 marked as Plaintiff's Exhibit 28. I believe this is already
2 offered into evidence, declaration?

3 THE COURT: Did I receive it in evidence?

4 MR. BROOKS: I believe you have.

5 MS. HOLLOWAY: Yes, we have it.

6 Q I'm going to show you the first page of this document.
7 Have you seen this document before?

8 A Yes.

9 Q When did you first see this document?

10 A During the course of the lawsuit.

11 Q The lawsuit we're here about today?

12 A Yes.

13 Q Did you provide information that's contained within this
14 document?

15 A Yes, I did.

16 Q Who to your knowledge wrote this document?

17 A The attorneys at the Corporation Counsel.

18 Q You didn't write this document, correct?

19 A No.

20 Q I'll show you the third page of this document. Is that
21 your signature on that line there?

22 A Yes, sir.

23 Q Did you read this document?

24 A Yes.

25 Q Did you read this document before you signed it?

1 A Yes.

2 Q I'll have you look at it again, the first page of
3 Plaintiff's Exhibit 28. Referring to the first two lines
4 underneath the caption of this case, were you aware when you
5 signed this document you signed it under penalty of perjury?

6 A Yes.

7 Q When you read this document before you signed it, did you
8 believe it to be inaccurate?

9 A No.

10 Q I want to refer you to --

11 THE COURT: Is this the same document?

12 MR. BROOKS: Yes, page two of Plaintiff's
13 Exhibit 28.

14 Q Line 17, which reads, at no time was Mr. Robertson struck
15 with a baton by any officer present.

16 A I actually can't see it.

17 Q I'll move it up. Can you see it now?

18 A Yes.

19 Q Did I read that correctly?

20 A At no time was Mr. Robertson struck with a baton by any
21 officer present, yes.

22 Q You already testified that you never saw Mr. Robertson
23 struck with a baton, correct?

24 A Yes.

25 Q When did you first learn he had been struck with a baton?

Prince-direct-Brooks

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1 A During the course of this litigation.

2 Q Was that after you signed this document?

3 A Yes.

4 Q This document should say I did not observe Mr. Robertson
5 struck with a baton, correct?

6 A Correct, yes.

7 Q But you didn't, again, write this document, correct?

8 A No, I did not.

9 Q Did you ever speak with anyone from the Kings County
10 District Attorney's Office about Mr. Robertson's April 14th
11 arrest?

12 A No.

13 Q Did anyone from the Kings County District Attorney's
14 Office ever contact you to discuss the April 14th, 2006
15 arrest?

16 A No.

17 Q Did you ever encourage an Assistant District Attorney to
18 go forward with criminal charges against the plaintiff?

19 A No.

20 Q Were you ever called to testify in criminal court
21 regarding Mr. Robertson's April 14th arrest?

22 A No.

23 Q Prior to April 14th, 2006 had you ever seen Dwayne
24 Robertson before?

25 A No.

Prince-cross-Holloway

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1 Q Have you seen Mr. Robertson since April 15th, 2006
2 excluding your time you spent in this courtroom?

3 A No.

4 Q At any time during your struggle with Mr. Robertson, did
5 you choke him?

6 A No.

7 Q At any time during your struggle with Mr. Robertson, did
8 you strike him in the head?

9 A No.

10 Q At any time during your struggle with Mr. Robertson did
11 you punch him?

12 A I don't recall.

13 MR. BROOKS: I have no further questions at this
14 time.

15 THE COURT: Thank you, Mr. Brooks.

16 Any cross?

17 MS. HOLLOWAY: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MS. HOLLOWAY:

20 Q Good afternoon, Detective Prince.

21 A Good afternoon.

22 MS. HOLLOWAY: I would like to show the witness
23 Exhibit 28 previously shown in his direct examination which
24 has been accepted into evidence.

25 THE COURT: Very well.

Prince-cross-Holloway

330

1 Q Officer Prince, I believe it was your testimony that you
2 recognize this document, correct?

3 A Yes.

4 Q Are you aware that this document was filed in this court
5 in connection with this action?

6 A Yes.

7 Q You testified that it was prepared by an attorney from
8 Corporation Counsel, correct?

9 A Yes.

10 Q Did you review it after it was prepared?

11 A Yes.

12 Q Was it your view at the time that it reflected the best
13 of your recollection at that time?

14 A Yes.

15 Q I would like to direct your attention to paragraphs six
16 and seven on page two. It was your testimony today that you
17 smelled marijuana while in your car, correct?

18 A Yes.

19 Q Is that stated in these paragraphs of your declaration?

20 A No, it isn't.

21 Q In fact, there's no mention in this affidavit about
22 marijuana, is there?

23 A No, there isn't.

24 Q I believe it was your testimony today that you smelled
25 marijuana from your car, from two car lengths away as you're

1 approaching Mr. Robertson, correct?

2 A Yes.

3 Q Did there come a time when you observed what you believed
4 to be a marijuana cigarette?

5 A Yes.

6 Q When was that time?

7 A As the vehicle approached the defendant.

8 Q If I could draw your attention to paragraphs six and
9 seven once again of your sworn affidavit, this affidavit
10 states that you knew it was a marijuana cigarette because of
11 your police training the signature looked, the way
12 Mr. Robertson was smoking it?

13 A Yes.

14 Q It's your testimony the cigarette was brown, correct?

15 A Yes.

16 Q Was there anything else that you could observe about that
17 cigarette that made you believe it was a marijuana cigarette?

18 A Besides the smell?

19 Q Anything you could visually see on that marijuana
20 cigarette that made you believe it was a marijuana cigarette?

21 A No.

22 Q Was that marijuana cigarette that you believed you
23 observed the only basis for stopping Mr. Robertson, correct?

24 A Yes.

25 Q You didn't recognize him, correct?

Prince-cross-Holloway

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1 A No.

2 Q As you approached him, did you have any reason to believe
3 he was armed?

4 A I did not know he was armed, no.

5 Q Did there come a time when you discovered Mr. Robertson
6 was armed?

7 A No.

8 Q In fact, you never confirmed that he was in fact smoking
9 a marijuana cigarette, did you?

10 A Correct.

11 Q You didn't recover that cigarette?

12 A No.

13 Q To your knowledge neither Officer Sullivan nor
14 Sergeant Degras recovered that marijuana cigarette, correct?

15 A To my knowledge, yes.

16 Q Do you recall speaking to a paralegal, Imani Woods?

17 A Yes.

18 Q I would like to show you what's previously marked as
19 Plaintiff's Exhibit 6-A.

20 THE COURT: Is this evidence?

21 MS. HOLLOWAY: It is, your Honor.

22 Q I would like to direct your attention to the last two
23 paragraphs of the exhibit; Officer Prince, you've seen that
24 first paragraph, deponent is informed by Police Officer Niles
25 Prince, shield number 22353 of the 75th Precinct that the

1 defendant did push upon, strike and hit and that the defendant
2 did swing defendant's arm and kick at the informed in order to
3 prevent an arrest?

4 A Yes.

5 Q Did you inform Imani Woods the information you see here?

6 A No.

7 Q Your testimony is that Imani was incorrect that she was
8 informed by you?

9 A She was informed by Detective Sullivan.

10 Q Paralegal was incorrect when she said she was informed by
11 you?

12 THE COURT: Don't do that. Your testimony is you
13 didn't speak to her, correct?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: Don't have him comment on whether
16 someone else, right or wrong, but you could elicit the facts,
17 argue.

18 MS. HOLLOWAY: Very well, your Honor.

19 Q Going back to your affidavit, Officer Prince, is it your
20 testimony today that Mr. Robertson began to run the moment you
21 set foot outside the car, correct?

22 A Yes.

23 Q That you identified yourself as a police officer, but you
24 said nothing else to Mr. Robertson before he started running;
25 is that correct?

1 A Correct.

2 Q I would like to direct your attention to paragraphs 8
3 through 11. Officer Prince, are you aware that it is
4 plaintiff Robertson's testimony that you exited the car,
5 approached him on foot and ordered him to turn around and
6 place his hands on the wall?

7 A I'm aware it's his testimony?

8 Q Yes.

9 A No, I'm not.

10 THE COURT: Sustained.

11 Q I would like to direct your attention specifically to
12 paragraph ten of your affidavit, which reads, I then got out
13 of the vehicle and ordered Mr. Robertson to turn around and
14 place his hands on the wall behind him, you see that?

15 A Yes.

16 Q Did he run the moment you got out of the car or after you
17 ordered him to turn around?

18 A The moment I got out of the car.

19 Q This statement in your affidavit is incorrect?

20 A During the time of this affidavit, this was correct.

21 Q I don't believe I understand your testimony, Officer
22 Prince. You say it was correct, what do you mean?

23 A Well, I signed the affidavit, states on line ten I got
24 out of the vehicle, ordered Mr. Robertson to turn around,
25 place his hands on the wall behind him.

1 Q That's not your testimony today, correct?

2 A Yes, because I don't recall.

3 Q I would like to direct your attention to Paragraph 17 of
4 your affidavit. This is the paragraph Mr. Brooks directed you
5 to, at no time was Mr. Robertson struck with a baton by any
6 officer present, you see that?

7 A Yes.

8 Q Is it your testimony today that you're not sure one way
9 or the other whether a baton was used on Mr. Robertson?

10 A It's my testimony today, to my knowledge a baton wasn't
11 used.

12 Q But this is a definitive statement a baton wasn't used,
13 correct?

14 A Yes.

15 Q I would like to show you Plaintiff's Exhibit 11 which has
16 previously been received into evidence, the second page of
17 Plaintiff's Exhibit 11, specifically to the box about a
18 quarter of the way down the page, says "force used."

19 MS. HOLLOWAY: How do I clear --

20 THE COURT: Press the lower right-hand corner.

21 MS. HOLLOWAY: Thank you, your Honor.

22 Q To the box that says "force used," if I could pull it up.
23 You see here -- first of all, do you recognize what this
24 document is, Officer Prince?

25 A Yes.

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1 Q What is it?

2 A I believe it's either an Omni form arrest report or
3 complaint. I'll not sure.

4 Q Do you see in the section of this report that we pulled
5 up there's a box under "force used." It's checked yes?

6 A Yes.

7 Q There's a box for type of force used and physical force
8 and baton are both checked?

9 A Yes.

10 Q That indicates that according to the preparer of this
11 report a baton was used during the arrest of Mr. Robertson,
12 correct?

13 A Yes, ma'am.

14 Q Did you review this arrest report before your affidavit
15 was prepared?

16 A No.

17 Q Did you review any of the underlying reports or paperwork
18 regarding Mr. Robertson's arrest before your affidavit was
19 prepared and it was submitted to this court?

20 A No.

21 Q You testified that you were struggling with
22 Mr. Robertson, correct?

23 A Yes.

24 Q It was your testimony at no time did you or any other
25 officer strike or choke Mr. Robertson, correct?

1 A Correct.

2 Q Is it that you don't remember whether he was struck or
3 choked, or is it's your testimony he wasn't struck or choked by
4 any of the officers present?

5 A It's my testimony that he wasn't choked or struck in the
6 back of the head, yes.

7 Q Are you aware that in his deposition, Sergeant Deglas
8 testified that you were fighting, striking one another at one
9 point?

10 A No.

11 Q I believe you testified that the area surrounding Pitkin
12 and Williams Avenue is a desolate industrial area?

13 A Yes.

14 Q Very little pedestrian traffic, correct?

15 A Yes.

16 Q Your car was unmarked, correct?

17 A Yes.

18 Q You testified earlier that you were wearing a badge,
19 correct?

20 A A shield, yes.

21 Q That shield was around your neck, correct?

22 A Correct, yes.

23 Q I believe you also testified earlier that you were
24 wearing a jacket, a raid jacket that said NYPD?

25 A I said I was possibly wearing a jacket, it was normal

1 practice for me.

2 Q You don't know one way or the other whether you were
3 wearing a raid jacket?

4 A It's a possibility. It's my own practice.

5 Q If you were not wearing a raid jacket, was there anything
6 about your appearance other than the badge you testified was
7 hanging around your neck that would indicate you were a
8 New York City Police Officer?

9 A No.

10 Q Do you recall being deposed by me in December of last
11 year, Officer Prince?

12 A Yes.

13 Q During that deposition, did you give any testimony about
14 this raid jacket that you now recall possibly wearing that
15 evening?

16 A No.

17 Q What was it that refreshed your recollection between the
18 time you were deposed in December of 2009 and today regarding
19 this possible raid jacket?

20 A Because I was wearing one in practice in anti-crime to
21 wear a raid jacket. The reason that was my practice to wear a
22 raid jacket, it's because of the geographical area.

23 Q You weren't wearing a raid jacket that night, were you?

24 A There's a possibility I was wearing a raid jacket, yes
25 because of my own practice.

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1 Q I would like to show you -- you testified, Officer
2 Prince, you recall being deposed by me?

3 A Yes.

4 Q Here are the following questions and answers, page 29.
5 Do you remember them?

6 "QUESTION: Was your badge visible as you
7 approached Mr. Robertson?

8 "ANSWER: Yes.

9 "QUESTION: Where was it?

10 "ANSWER: Around my neck.

11 "QUESTION: And what were you wearing?

12 "ANSWER: I don't recall.

13 "QUESTION: Were you in a police uniform?

14 "ANSWER: No.

15 "QUESTION: Was there anything to identify you as a
16 police officer other than the badge around your neck?

17 "ANSWER: The color of the day.

18 "QUESTION: What's the color of the day?

19 "ANSWER: Color of the day is a sweat band or
20 wrist bands we wear on arm on the outermost garment to
21 identify ourselves as police officers to other police
22 officers.

23 "QUESTION: Does the color of that band change
24 every day?

25 "ANSWER: Yes.

1 "QUESTION: Would there have been a reason for
2 Mr. Robertson to recognize your color of the day bands?"

3 MR. BROOKS: Objection.

4 THE COURT: Overruled.

5 Q The answer, no."

6 At the time of your deposition --

7 THE COURT: Excuse me, there's a question whether
8 he recalls giving that testimony?

9 Q Do you recall giving that testimony?

10 A Yes.

11 Q At the time of your deposition, you made no mention of
12 your raid jacket, correct?

13 A Yes.

14 Q Is it your testimony today that if Mr. Robertson had been
15 hit in the leg with a baton by Sergeant Degl as, you couldn't
16 have seen it, you wouldn't have seen it, correct?

17 A Yes.

18 Q Why is that?

19 A Because we were both positioned on the ground and my face
20 was to his face. We were face-to-face on the ground.

21 Q Were you always face-to-face on the ground?

22 A No, at one point he was on top of me and one point I was
23 on top of him.

24 Q Now you're aware that in fact Sergeant Degl as did hit him
25 with a baton, correct?

1 A Yes, I learned, yes.

2 Q You can't confirm the account he hit Mr. Robertson in the
3 legs with the baton because you didn't see that, correct?

4 A Yes.

5 Q Does a baton make a noise when it's deployed?

6 A Yes.

7 Q Do you recall hearing that noise the night in question?

8 A No.

9 Q It was your testimony today all points during your
10 struggle with Mr. Robertson you were either above him or
11 underneath him on the ground; is that correct?

12 A Yes.

13 Q You were struggling with him, right?

14 A Yes.

15 Q Yet, it is your testimony you didn't see a baton being
16 deployed at any point against the person with whom you were
17 struggling?

18 A Yes.

19 Q Do you know at some point that Sergeant Degras -- sorry,
20 did you realize at some point that Mr. Robertson was injured?

21 A No, I don't recall.

22 Q You don't recall that he was bleeding at any point?

23 A Yes, I don't recall.

24 Q Are you now aware that he was injured as a result of the
25 incident on April 14th, 2006 to his face?

Prince-cross-Holloway

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1 A According to the allegations of this litigation, yes.

2 Q I would like to show you Plaintiff's Exhibit 25, offered
3 and received into evidence. You see this photo of
4 Mr. Robertson, Officer Prince?

5 A Yes.

6 Q Do you see there's bruising around his left eye and some
7 kind of laceration that is closed above his left eye?

8 A Yes.

9 Q These type of injuries bleed quite a bit, don't they,
10 Detective Prince?

11 MR. BROOKS: Objection.

12 THE COURT: Lay a foundation.

13 Q Have you ever observed a suspect that you were struggling
14 with bleed from their head?

15 A No.

16 Q Are you now aware that Mr. Robertson did in fact have a
17 laceration above his left eye on the evening of April 14th,
18 2006?

19 A Because of this litigation, yes, I'm aware now.

20 Q You weren't aware then?

21 A No.

22 Q You're aware Mr. Robertson was in fact transported to the
23 emergency room to have a laceration above his eye closed,
24 correct?

25 A I wasn't aware of that at the time. Because of this

1 litigation, yes, I'm aware now.

2 Q It's your testimony you never saw any blood coming from a
3 laceration above Mr. Robertson's eye at any point on the
4 evening of April 14th, 2006?

5 A It's my testimony I don't recall, yes.

6 Q It was your testimony today that you did not collect the
7 black object that you've testified you observed Mr. Robertson
8 throw, correct?

9 A Yes.

10 Q You don't know where that object was when it was
11 collected, correct?

12 A Correct, yes.

13 Q You didn't see either Officer Prince or Sergeant Deglasi
14 collect that object?

15 A I'm Detective Prince --

16 Q You didn't see either Detective Sullivan or
17 Sergeant Deglasi collect that object, did you?

18 A No, I don't recall.

19 Q Are you aware Officer Deglasi testified in his deposition
20 that you and Officer Sullivan went back to collect that
21 object?

22 A No, I wasn't aware of that.

23 Q Is that testimony incorrect?

24 THE COURT: Don't do that. Sustained. Don't have
25 one witness comment on the correctness of or truthfulness of

1 another. Just elicit testimony.

2 Q That's not your recollection, is it?

3 A Correct, yes.

4 Q It's your recollection that Detective Sullivan collected
5 the black object?

6 MR. BROOKS: Objection.

7 THE COURT: Overruled.

8 A It's my recollection I'm not sure who collected it.

9 Q You do know, you do recollect you didn't collect the
10 black object, right?

11 A Correct, yes.

12 Q You testified regarding an injury to your wrist, did you
13 not?

14 A Yes.

15 Q How did you sustain that wrist injury, from rolling on
16 the ground?

17 A Correct, yes.

18 Q How did you injure your wrist from rolling on the ground?

19 A I don't recall.

20 Q This was not an injury sustained from punching
21 Mr. Robertson in the back of the head or in the chest with
22 that fist?

23 A No.

24 Q You testified today that you went for follow-up care with
25 your primary care physician?

Prince-cross-Holloway

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1 A Yes.

2 Q I would like to direct your attention to page 67 of your
3 deposition transcript. During your deposition in December, do
4 you recall being asked the following question, giving the
5 following answer?

6 "QUESTION: Did you seek any further treatment for
7 your wrist injury after you were released from Jamaica
8 Hospital on April 15th?

9 "ANSWER: No."

10 A Yes.

11 Q Did you in fact receive follow-up treatment?

12 A If the question was, did you seek any further treatment.
13 I did not seek any further treatment, but I went to my primary
14 physician to see if my wrist was usable. So, no, I didn't
15 receive treatment, but I did go to my doctor, yes, with
16 regards to my wrist.

17 Q It's your testimony today you did seek further treatment
18 after your treatment at Jamaica Hospital?

19 A I didn't receive treatment for my wrist, no. I went for
20 checking-up for my wrist.

21 Q You did seek treatment for your wrist?

22 A Yes.

23 Q Did Mr. Robertson? ^ was there an answer.

24 Q Do you recall whether you made contact at any point with
25 his fist?

1 A I don't recall.

2 Q You didn't complain of injury that evening from being
3 struck by Mr. Robertson, correct?

4 A Correct.

5 Q You have a copy, or we can pull up Plaintiff's
6 Exhibit 28, which is a copy of your affidavit, and if you
7 would like to see any other pages, we'll put up the first
8 page, let me know if you want to see further pages.

9 Is there any reference in this affidavit to your
10 suspicion that you articulated today, Mr. Robertson, do have
11 had a gun?

12 A No.

13 Q Was that a suspicion that you had at the time of the
14 incident in question, April 14th, 2006?

15 A Yes.

16 Q It's one that you testified about here today?

17 A Yes.

18 Q Yet, it's not in your affidavit?

19 A Correct, yes.

20 Q Why not?

21 A Because I didn't.

22 Q You testified here today that your suspicion that he had
23 a gun was the reason you tackled him, correct?

24 A Yes.

25 Q Yet that doesn't appear in this affidavit, correct?

1 A Correct, yes.

2 Q If you believed Mr. Robertson was in fact reaching for a
3 gun, does that mean at that time that you thought your life or
4 someone else's life could be in danger?

5 A Correct, yes.

6 Q I would like to direct you to page 49 of your transcript.
7 Do you recall being asked the following questions and giving
8 the following answers starting at line nine?

9 "QUESTION: In your view when is it appropriate to
10 use deadly force?

11 "ANSWER: In my view when is it appropriate to use
12 deadly force? When my life or another individual's life is at
13 risk of deadly force or at risk of death.

14 "QUESTION: Was deadly force called for in your
15 contact with Mr. Robertson on April 15th?

16 "ANSWER: I don't understand the question.

17 "QUESTION: In your view, was the use of deadly
18 force have been appropriate on April 15th in your contact with
19 Mr. Robertson?

20 "ANSWER: No."

21 Do you recall giving that testimony?

22 A Yes, yes, ma'am.

23 (Continued on next page.)

24

25

1 EXAMINATION CONTINUES

2 BY MR. HOLLOWAY:

3 Q So were you in fear for your life or were you not in fear
4 for your life on April 14, 2006?

5 A I was in fear for my life, yes.

6 Q That's not the testimony you gave during your deposition
7 though, was it?

8 A Correct, yes.

9 Q When this action was filed, did you receive notification
10 of this action?

11 A No.

12 Q In the course of your preparing for -- I'm sorry.

13 In the course of your preparation for your
14 affidavit, did you have a chance to review the complaint that
15 was filed in this action?

16 MR. BROOKS: Objection.

17 THE COURT: Overruled.

18 A No.

19 Q You didn't review the arrest report before preparing your
20 affidavit, correct?

21 A Correct, yes.

22 Q You didn't review the complaint before preparing your
23 affidavit that was submitted in this action, did you?

24 A The complaint I was -- submitted for this lawsuit? I did
25 review, yes.

1 Q You did?

2 A I really don't recall. I really don't recall.

3 THE COURT: Are you referring to the complaint in
4 the criminal case or the complaint that started this lawsuit?

5 MS. HOLLOWAY: The complaint that started this
6 lawsuit.

7 A No, I don't recall.

8 Q What was the basis for the facts that you set out in our
9 affidavit?

10 A What was the basis for the facts I set out in my
11 affidavit? The basis were what took place that evening.

12 Q But you didn't seek to verify what took place that
13 evening by reference to the underlying documents, did you?

14 A Yes, correct.

15 Q It was your testimony that you -- when you tackled
16 Mr. Robertson, you could smell the stench of marijuana and his
17 eyes were bloodshot, is that correct?

18 A It was my testimony when we picked Mr. Robertson up off
19 the ground, I could smell the stench of marijuana and I
20 noticed that his eyes were bloodshot red, yes.

21 Q Is that -- is that information contained anywhere in the
22 affidavit that you submitted to this Court?

23 A No.

24 Q Is that something that you didn't recall at the time that
25 the affidavit was prepared?

1 A That was something I overlooked, yes.

2 Q But you recalled it sometime between the preparation of
3 your affidavit and your testimony today?

4 A Yes.

5 Q Was there something that refreshed your recollection?

6 A No.

7 Q One more question, officer.

8 It was your testimony that when you were handcuffing
9 Mr. Robertson, that Detective Sullivan said something,
10 correct?

11 A Yes.

12 Q He said stop resisting, right?

13 A Yes, ma'am.

14 Q Where was he standing when he said that?

15 A On the opposite side of me, or Dwayne Robertson. I was
16 on one side. Detective Sullivan was on the other side.

17 Q Where was Sergeant Degras at that point?

18 A I am not sure. I don't recall.

19 Q But you do recall Officer Sullivan standing by you and
20 Mr. Robertson, right?

21 A Yes.

22 Q You weren't so engrossed in struggling with Mr. Robertson
23 that you didn't notice Detective Sullivan?

24 A I was engrossed in Mr. Robertson but I used my peripheral
25 vision.

Prince - rediect - Brooks

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1 Q You di dn' t see Sergeant Degl as i n your peri pheral vi si on?

2 A No.

3 Q You di dn' t see a baton bei ng depl oyed i n your peri pheral
4 vi si on?

5 A No.

6 MS. HOLLOWAY: That's al l .

7 THE COURT: All ri ght. Thank you, Ms. Hol loway.

8 Any re-di rect?

9 MR. BROOKS: Yes.

10 THE COURT: Go ahead, pl ease.

11 REDI RECT EXAMI NATI ON

12 BY MR. BROOKS.

13 Q Detective Prince, I am goi ng to show you agai n page two
14 of Pl ai ntiff's Exhi bi t 28, wh ch i s part of your decl arati on.

15 Referring your attenti on to paragraphs ei ght through
16 ten regardi ng what you said to Mr. Robertson when you stepped
17 out of your vehi cle.

18 Do you see where I was referring to?

19 A Yes, sir.

20 Q Is it possi ble that you said that to Mr. Robertson?

21 A Yes, there i s a possi bility.

22 Q Regardl ess of what else you said to Mr. Robertson, you
23 di d i denti fy yoursel f as a police offi cer when you got out of
24 your vehi cle, correct?

25 A Yes.

Prince - rediect - Brooks

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1 Q And at that point Mr. Robertson ran, correct?

2 A Yes.

3 Q When you were struggling with Mr. Robertson, where was
4 your attention fixed?

5 A On Mr. Robertson.

6 Q Why was that?

7 A Because I was concerned about him actually grabbing my
8 forearm.

9 Q And Detective Prince, in every situation where you fear
10 for your life, have you used deadly force?

11 A No.

12 Q You can use less amounts of force, correct?

13 A Yes.

14 Q If that resolves the situation?

15 A Yes, correct.

16 MR. BROOKS: I have no further questions.

17 THE COURT: All right. Anything further,
18 Ms. Holloway?

19 MS. HOLLOWAY: Nothing further.

20 THE COURT: Thank you, Mr. Brooks.

21 You can step down, Detective Prince.

22 Call your next witness, please, gentlemen.

23 MR. BROOKS: Your Honor, defendants call Sergeant
24 Dimitri Deglas.

25 THE COURT: All right.

Degl as - direct - Brooks

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1 (Mr. Prince steps down.)

2 THE COURT: Mr. Brooks, have a seat on the bench
3 there while the witness is sworn, please.

4 Thank you.

5 Please swear the witness.

6 THE CLERK: Please raise your right hand.

7 (The witness is duly sworn/affirmed by the clerk.)

8 THE CLERK: Please be seated.

9 Please state and spell your name for the record.

10 THE WITNESS: Sergeant Dimitri Degl as,

11 D I M I T R I , D E G L A S .

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q Good afternoon, Sergeant Degl as.

15 A Good afternoon, sir.

16 Q Sergeant Degl as, are you currently employed?

17 A Yes, sir.

18 Q Who are you currently employed by?

19 A The New York City Police Department.

20 Q How long have you been employed by the New York City
21 Police Department?

22 A Twenty-two years and one month.

23 Q What is your current rank in the New York City Police
24 Department?

25 A I'm a sergeant.

Degl as - direct - Brooks

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1 Q When did you become a sergeant in the NYPD?

2 A February 27, 2004.

3 Q Sergeant is a rank that you are promoted to within the
4 NYPD?

5 A Yes, sir.

6 Q What do you have to do to get promoted to sergeant?

7 A You have to take a civil service exam which you have to
8 pass. Based on that grade, you get promoted in order.

9 Q What rank did you hold before becoming a sergeant?

10 A I was a detective for ten years before that.

11 Q Where were you assigned while you were a detective?

12 A I was assigned to the Organized Crime Control Bureau, but
13 I worked in different divisions within there. Specifically I
14 worked in the Narcotics Division, the Auto Crime Division and
15 the Organized Crime Investigative Division.

16 Q What rank did you hold before becoming a detective?

17 A I was a police officer.

18 Q How long were you a police officer for?

19 A I believe, six-and-a-half years.

20 Q Where are you currently assigned as a sergeant?

21 A I am assigned to the Central Robbery Section of the
22 Special Investigations Division. That's part of the Detective
23 Bureau.

24 Q What are your responsibilities in your current
25 assignment?

Degl as - direct - Brooks

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1 A I am currently the commanding officer of the Taxi Squad.
2 We are responsible for robbery patterns concerning taxis,
3 deliveries.

4 Q How many people do you supervise in that capacity?

5 A I have four at the moment, four detectives.

6 Q Sergeant Degl as, I am now going to focus your attention
7 on the events of April 14, 2006.

8 Do you recall the events of April 14, 2006?

9 A Yes, sir, I do.

10 Q What rank did you hold on April 14, 2006?

11 A I was a sergeant at that time.

12 Q Were you working that day?

13 A Yes, I was.

14 Q What command were you assigned to?

15 A I was assigned to the 75th Precinct, in East New York,
16 Brooklyn.

17 Q What unit were you assigned to within the 75th Precinct?

18 A I was assigned to the Anti crime Unit.

19 Q What were your responsibilities within that unit?

20 A I was the Anti crime supervisor. I was the Anti crime
21 sergeant.

22 Q Just briefly, what are the responsibilities of officers
23 in the Anti crime Unit?

24 A The Anti crime Unit is primarily responsible for
25 suppressing violent street crime. That would include gun

Degl as - direct - Brooks

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1 possession, robberies, assaults, burglaries; any felony crime
2 really.

3 Q What were you wearing on April 14, 2006?

4 A I was wearing plain clothes.

5 Q Why were you in plain clothes?

6 A Anti crime units perform their duties in plain clothes.

7 Q Were you wearing anything that identified you as a police
8 officer?

9 A No, other than a shield which I had around my neck but it
10 wasn't exposed at that time.

11 Q What was your shield number on April 14, 2006?

12 A The same as it is today, 1647.

13 Q Who were you directly supervising on April 14, 2006?

14 A At the time it was Police Officer Prince and Police
15 Officer Sullivan.

16 Q What did the three of you do during your tour of duty on
17 April 14, 2006, generally?

18 A We were patrolling within the confines of the
19 75th Precinct.

20 Q What sort of vehicle were you on patrol in?

21 A We were in an unmarked car. It was -- I believe black in
22 color with tinted windows.

23 Q What was Detective Sullivan's assignment that night?

24 A He was the operator of the vehicle.

25 Q What does the operator do?

1 A He is the driver.

2 Q And what was Detective Prince's assignment that night?

3 A He was the recorder, the front seat passenger.

4 Q What does the recorder do?

5 A Typically the recorder is responsible for any
6 administrative matters to take care within the tour. If a
7 radio assignment would come over, he would write it down or
8 any descriptions come over because obviously the driver can't
9 be concerned with doing that while he is operating the
10 vehicle.

11 Q Where were you seated in the vehicle?

12 A I was seated directly behind Police Officer Prince. I
13 was the right rear passenger.

14 Q Did there come a time where you were on patrol in the
15 vicinity of Williams Avenue and Pitkin Avenue in East
16 New York?

17 A Yes.

18 Q Approximately what time of day was it when you reached
19 that vicinity?

20 A Approximately a quarter to one, twenty to one. I don't
21 recall the exact time.

22 Q On April 15th?

23 A Yes, it would have been April 15th at that moment.

24 Q What street were you traveling down when you reached that
25 vicinity?

Degl as - direct - Brooks

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1 A Initially we were traveling on Pitkin Avenue, approaching
2 Williams Avenue.

3 Q Were the windows in your vehicle down?

4 A My window was maybe a quarter of the way down; Police
5 Officer Prince was three quarters to all the way down; and
6 Police Officer Sullivan, his window was all the way down.

7 Q How do you know that they were down?

8 A Because I was actually -- it was a cold night and several
9 times during that evening I had -- I asked both of them to put
10 the windows up because if you've ever sat in the window -- in
11 the rear seat of a car with both windows open on a cold night,
12 it gets very, very cold.

13 Q Why generally were the windows down in the vehicle?

14 A It is just to facilitate the detection and observation of
15 crime. I mean, it's -- I would also tell them not to put on
16 the radio so that you could actually hear better and since the
17 window -- the windows on this vehicle were tinted and it is
18 night, it's much easier to see with the windows down.

19 Q Could you briefly describe for the jury what the area in
20 the vicinity of Pitkin and Williams was like on April 14,
21 2006?

22 A Yes.

23 That particular area is an industrial area. It's
24 all -- comprised primarily of commercial establishments,
25 parking lots, small factories. The area is fairly well-lit by

Degl as - direct - Brooks

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1 street lights and by building lights.

2 Q To your knowledge, were there any businesses open near
3 the corner of Pitkin and Williams at that point?

4 A No, there weren't.

5 Q Where is the nearest subway stop?

6 A Four to five blocks west of that location.

7 Q To your knowledge, were there any buses running in that
8 vicinity at that time of night?

9 A I didn't see any, no.

10 Q Did there come a time in the evening of April 14, 2006,
11 or the very early morning hours of April 15th, that you became
12 aware of the plaintiff Dwayne Robertson?

13 A Yes.

14 Q What first draw your attention to Mr. Robertson?

15 A It was a comment made by either Police Officer Prince or
16 Police Officer Sullivan, to the effect of oh, I think that guy
17 is smoking. Let's check him out. Those weren't the exact
18 word. It was words to that effect.

19 Q When you say they said he was smoking, what was your
20 understanding of what Mr. Robertson was smoking?

21 A I really wasn't sure at the time.

22 Q What happened next?

23 A We were initially proceeding eastbound on Pitkin Avenue
24 approaching Williams Avenue. When that comment was made,
25 Police Officer Sullivan made a U-turn with the vehicle so that

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1 now we were going westbound on Pitkin and he started to cross
2 into the eastbound lane of traffic. So he crossed the double
3 yellow line on Pitkin so that now we were pulling almost
4 parallel with Mr. Robertson as he was walking southbound on
5 Pitkin approaching Williams Avenue.

6 Q What was Mr. Robertson doing when you first saw him?

7 A When I first observed him, he was walking at a brisk
8 pace. He was simply walking.

9 Q What happened next?

10 A At that point, as we drew closer to him, Police Officer
11 Sullivan, who had his window down, engaged him and said
12 something to the effect of yo, my man, police. Can we talk to
13 you for a minute?

14 Q What did Mr. Robertson do in response to that comment?

15 A I don't know if he said anything. But it seemed to me
16 that he immediately started to run.

17 Q What did your officers do in response to that?

18 A Police Officer Prince exited the front seat of the car
19 and he started to -- he initiated foot pursuit with
20 Mr. Robertson. So, in other words, he was chasing
21 Mr. Robertson as Mr. Robertson was running southbound on
22 Williams Avenue.

23 Q Did you hear Detective Prince say anything?

24 A I didn't hear anything, no.

25 Q Is it possible he said something and you couldn't hear

1 it?

2 A It's entirely possible. But I was still in the vehicle
3 at that juncture so I don't know.

4 Q Which way did Mr. Robertson run?

5 A He made a left turn from Pitkin Avenue southbound on to
6 Williams Avenue.

7 Q Did you observe Detective Prince chase Mr. Robertson?

8 A I observed the initial moments of the chase but as the
9 chase commenced, I told Police Officer Sullivan to drive past
10 Mr. Robertson in order to cut off his avenue of escape.

11 Q What did you see Mr. Robertson during those initial
12 moments?

13 A I -- I saw what appeared to be a motion with his right
14 elbow coming up from his right area, from either his right
15 jacket pocket or from his right waistband, but it was -- it's
16 a momentary glimpse that I got because as the car sped off to
17 cut him off, that's -- at that point he was at the side and
18 then suddenly behind me. So I didn't see too much. But I did
19 see his elbow come up.

20 Q How far away was he from you when he reached for his
21 waist?

22 A At the most, car length, a car length away.

23 Q What did you think when you saw him reach for his waist
24 in that manner?

25 A Oh, in my experience, and I have been doing this a long

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1 time, those actions are fairly typical of somebody who is
2 trying to remove something, contraband or weapon, from their
3 person. Usually what happens at that point, it is not
4 necessarily that they want to use it against the officer.
5 They want to get rid of it.

6 I could tell you right now that I got scared at that
7 moment because I have been in those situations where people
8 have drawn weapons, have actually had weapons in their hand,
9 in the vicinity. It is not a good feeling.

10 Q Did you see what Mr. Robertson did with whatever he may
11 have reached for in his waist?

12 A I really didn't, no.

13 It looked like a dark object came out and went to
14 the ground. But, again, the car was moving fast at that point
15 so I really -- I can't say for sure.

16 Q What did you see once Detective Sullivan had pulled the
17 car in front of Mr. Robertson?

18 A As soon as I got out of the car, I think I got out before
19 Police Officer Sullivan even put the car in park, I stood up
20 and I looked northbound on to Williams Avenue and I observed
21 Police Officer Prince and Mr. Robertson rolling around the
22 street, clearly engaged in a fight, in a struggle.

23 Q Could you describe for the jury the struggle between
24 Detective Prince and Mr. Robertson?

25 A They were rolling around. At one point I saw

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1 Police Officer Prince on one knee. Then he was on two knees.
2 He was trying to hold him down. Mr. Robertson was pushing
3 away, to get up. It looked to me like they were exchanging
4 blows. They were clearly involved in a fight.

5 Q What did you do once you observed that struggle?

6 A As soon as I saw that, I -- it became apparent that I had
7 to render assistance to my officer. So I -- as I was --
8 started running over. Even as I was out of the car, I took
9 the baton out of my holster. I deployed it. Which I extended
10 it to its full length. I started to run over to their
11 position.

12 Q When you said you deployed it, you indicated a downward
13 stroke with your hand?

14 A Yes, as I was running.

15 Q When you said that you saw Detective Prince and
16 Mr. Robertson possibly exchanging blows, did you ever see
17 Detective Prince strike Mr. Robertson in the head?

18 A No. I can't say that I did, no.

19 Q Were you carrying a gun that evening?

20 A Yes.

21 Q What kind of gun were you carrying?

22 A I was actually carrying two guns that evening. They were
23 both two-millimeter Gllocks. I had my service weapon and my
24 backup weapon on me too.

25 Q Those are all pistols?

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1 A Yes.

2 Q Did you draw any of those guns?

3 A No.

4 Q Why didn't you draw your guns?

5 A I didn't feel that -- at that moment that it rose to that
6 level.

7 Q Were you carrying mace that evening?

8 A Yes, I was.

9 Q Why didn't you use mace on Mr. Robertson?

10 A Because by -- when I reached their position, had I used
11 mace on Mr. Robertson, chances are I would also have maced
12 Police Officer Prince because the mace tends to dissipate.

13 Q What did you do after you deployed your baton?

14 A When I got up to the position, they were still fighting.
15 Mr. Robertson's head was facing northbound on Williams. His
16 feet were closer to me, his legs. Police Officer Prince had
17 his back partially to me but he wasn't looking at me.

18 Obviously he was concentrating on Mr. Robertson at that point.
19 I had the nightstick fully deployed. I struck Mr. Robertson
20 twice in the thigh, on his left thigh.

21 Q Did you give Mr. Robertson any orders before you struck
22 him with the baton?

23 A No.

24 The -- the only thing I said in conjunction with the
25 strikes was that stop resisting. I said it maybe three or

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1 four times. I yelled it as loud as I could.

2 Q Why didn't you give him any orders before you struck him
3 with the baton?

4 A There simply wasn't time. He was involved in an active
5 struggle with my officer. My biggest concern regardless of if
6 he had a gun or not was I knew for a fact that police
7 officer -- I mean, Police Officer Prince had a gun on him.
8 There is always a very real possibility when a police officer
9 is actively engaged with a -- in a fight with somebody that
10 gun could be taken away from him.

11 Q Sergeant Degl as, do you have your baton with you here
12 today?

13 A Yes, sir.

14 Q It is the same baton that you had on April 14, 2006?

15 A The very same one; I've had this baton since 1998.

16 Q Could you, with Your Honor's permission, stand up and
17 demonstrate on your leg where exactly you struck Mr. Robertson
18 with the baton?

19 A Yes.

20 THE COURT: Yes, you can do so.

21 A The area that I struck him in is the area I located between
22 the knee and the hip, directly into this nerve center right
23 here. The effect that it has, when this is struck, it
24 contracts the muscles involuntarily. If you've ever had a
25 dead leg or Charlie horse you know that feeling.

1 So what happens is, it delivers a lot of pain to the
 2 area. It is a temporary pain. It dissuades whoever is
 3 fighting, it makes them think twice about continuing the
 4 struggle. That was my intent there, to end the struggle
 5 immediately before anybody got hurt.

6 Q Did you ever strike Mr. Robertson in the head?

7 A No.

8 Q Why not?

9 A Because this is effectively a metal pipe. It's a hollow
 10 metal pipe. If I was to strike anybody in the head,
 11 Mr. Robertson, probably would have fractured his orbital
 12 socket with no problem. So no, head strikes are completely
 13 prohibited by the New York City Police Department with batons.

14 The designated strike areas are in the arms and the
 15 legs and large muscle mass groups.

16 Q Let the record reflect when the sergeant was giving that
 17 answer he was showing the jury the expanded baton.

18 How long did you strike Mr. Robertson for?

19 A I would say, just one second.

20 There were two rapid strikes in succession. That's
 21 really all that was needed because he immediately complied
 22 after that. He didn't -- no longer struggled.

23 Q How long was it from you initially deploying your baton
 24 to your striking Mr. Robertson?

25 A It was a matter of seconds. By the time I got out of the

1 car to the time I reached him, the distance would be less than
2 from the witness stand to where you are standing, sir.

3 Q What did Mr. Robertson do after you had struck him with
4 the baton?

5 A He brought his knees up to his chest. He brought his
6 elbows in and he tried to turn over. He was trying to protect
7 himself. Obviously he thought more strikes were coming.

8 Once I saw that, I saw the opportunity to handcuff
9 him and end the struggle, which at that point Police Officer
10 Prince was trying to get his arm behind his back. I was
11 trying to do the same thing. By then Police Officer Sullivan
12 had already joined us. So it took the three of us to handcuff
13 him.

14 Q What did you do with your baton after you struck
15 Mr. Robertson?

16 A Before I was -- I even tried to get the handcuffs on him,
17 I collapsed the baton. The way you collapse it is you hit it
18 against a hard surface.

19 Your Honor, if you -- I can demonstrate? If you
20 feel it is necessary?

21 THE COURT: Any objection?

22 MS. HOLLOWAY: No objection.

23 THE COURT: Go ahead.

24 A This night -- it might not immediately because it is a
25 carpet. You just strike it to the ground and it goes back to

1 its original state and I put it back into my holster to have
 2 my hand free so I could actually handcuff or aid in the
 3 handcuffing of Mr. Robertson.

4 So the whole process, from the deployment to
 5 striking to collapsing is very, very fast. I could probably
 6 do it in two seconds.

7 Q Who actually handcuffed Mr. Robertson?

8 A I -- I don't know. It was a collaborative effort at that
 9 point. Typically, handcuffing somebody who doesn't want the
 10 be handcuffed is not always easy. Clothing gets in the way.
 11 You know, its -- it's not textbook.

12 Q What did you observe after -- sorry. Withdrawn.

13 What did you do after the handcuffs were on
 14 Mr. Robertson?

15 A At that point I think we all kind of like stood up and I
 16 just took a breather because we had all -- Police Officer
 17 Prince was -- obviously a little tired at that point. We all
 18 were.

19 I recall after that there was a -- a preliminary
 20 search done to make sure he wasn't armed, he had no knife or
 21 gun or anything else that might hurt is. At that point he was
 22 on his stomach, handcuffed, and I turned my attention to
 23 Police Officer Prince who was holding up his wrist and he was
 24 circling it around. I said Niles, are you all right. He
 25 said -- his actual words to me were no, boss, I think I hurt

1 my wrist. I said okay. We'll take care of that.

2 Then I turned my attention to Mr. Robertson who was
3 lying in front of me. I noticed some drops of blood forming
4 underneath his eye, on to the pavement, directly beneath his
5 head.

6 Q At that point was Mr. Robertson conscious?

7 A Yes. He was conscious, yes.

8 Q Do you know what caused the drops of blood to form?

9 A Well, he had sustained an injury. At that point I
10 remember that we turned him over and sat him up. I could
11 clearly see that he had a cut and that there was blood coming
12 from that wound.

13 Q Where was that cut located?

14 A Directly above his -- in his eyebrow area, above his left
15 eye.

16 Q Could you see how big the cut was at that point?

17 A No. It was obscured by the blood. I really couldn't
18 tell how big it was.

19 Q What happened next?

20 A At that point I -- now we had an injured prisoner. Once
21 he's in our custody, it's our responsibility to provide
22 treatment for him. So I made mention -- what I said was, we
23 got to get him a bus. A bus in police jargon is an ambulance.
24 I knew that we had to get him medical attention. I also knew
25 that Police Officer Prince was injured. I knew he would have

1 to get medical attention. So all these things were going
2 through my mind at this point.

3 Q Did there come a time where you became aware that
4 Detective Prince had observed Mr. Robertson throw away an
5 object?

6 A Yes. At some point there was a conversation about that.
7 I directed Police Officer Prince to go back to the area, which
8 he did, and I was still talking with Police Officer Sullivan
9 at that point and I told him I said, Matt, go help him out.
10 See -- I could see that he wasn't -- he couldn't immediately
11 find what he was looking for. I remained with Mr. Robertson,
12 who -- and I could still see my two officers on the corner.
13 They were on the southeast corner looking for something.
14 Eventually they came back.

15 Q How long did that take them?

16 A I -- I really don't know. It took a minute, maybe two at
17 the most. I am not sure.

18 Q What to your knowledge, did they find?

19 A When they came back, Police Officer Sullivan came back
20 with -- I remember in one hand he had some crumpled up -- it
21 looked to me like one glove, crumpled up, and then he had bags
22 of marijuana in the other hand. He showed me what it was. I
23 said okay. Let's wrap this up. Let's get out of here. At
24 this point I just wanted to get him back to the precinct and
25 get him an ambulance so we could end this.

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1 Q When you say him, who are you referring to?

2 A The plaintiff, Mr. Robertson.

3 Q Was Mr. Robertson conscious throughout all of this?

4 A Yes, the entire time.

5 Q What did his demeanor seem to you to be?

6 A Well, he appeared to me to be intoxicated because
7 he -- all he kept saying was what happened, what did I do,
8 what happened, what did I do. He kept saying it over and
9 over, to the point where I just tuned him out. I just wanted
10 to get him back to the precinct. I really didn't want to
11 listen to him anymore.

12 Q What happened once you got back to the printing?

13 A Once we got back to the precinct, I immediately went
14 behind the desk and I had Mr. Robertson's pedigree
15 information. I entered that into the Command Log so there was
16 a record of the arrest and he was brought to the station
17 house. I believe in fact on the way to the precinct I had
18 already requested an ambulance be dispatched to the precinct.

19 Q So Mr. Robertson eventually went to the hospital?

20 A Yes. Eventually he went to the hospital, yes.

21 Q Do you know which hospital he went to?

22 A Yes.

23 Q What hospital is that?

24 A Brookdale Hospital.

25 Q Did you go with Mr. Robertson to the hospital?

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1 A No, I did not.

2 Q What did you do?

3 A I eventually went to Jamaica Hospital with Police Officer
4 Prince.

5 Q How long were you at the hospital with Detective Prince
6 for?

7 A We were there for a while. The biggest problem was
8 getting the X-ray technician. So I would say, an hour and a
9 half, two hours.

10 Q Where did you go after the hospital?

11 A We returned to the precinct.

12 Q Are you aware that Detective Sullivan completed the
13 arrest paperwork for Mr. Robertson?

14 A Yes. By the time we got back from the hospital, he had
15 already done that, yes.

16 Q Did you review that paperwork?

17 A Yes, I did.

18 Q What paperwork did you review?

19 A There was a complaint report, an arrest report, a
20 property clerk's invoice, and there might have been two
21 property clerk's invoices, and some other paperwork which I
22 don't really remember at this time.

23 Q Was in your opinion Detective Sullivan's paperwork
24 consistent with what happened during the incident?

25 A Prior to leaving to the hospital I had discussed with

1 Police Officer Sullivan the charges that we would eventually
2 bring against Mr. Robertson and I was satisfied that the
3 outlines that I had given to him were met. So I signed off on
4 the paperwork.

5 Q Sergeant Degl as, what happens to drugs when they are
6 recovered from the scene of an arrest?

7 A A voucher is prepared, a full description of the item is
8 entered on to the property clerk's invoice. The narcotics or
9 the marijuana is placed into a narcotics envelope and then it
10 is sealed up. It is placed into a narcotics locker, where
11 eventually it is taken to the lab, the police lab for
12 examination.

13 Q Do you as a sergeant transport the drugs to the lab?

14 A No, no.

15 Q Would the officers under your direct supervision that
16 might have responsibility for transporting the drugs to the
17 lab?

18 A No.

19 Q Do you as a sergeant have access to the locker in which
20 those drugs are kept before they are transported to the lab?

21 A Only if I am assigned as the Desk Officer. So in other
22 words, the -- the supervisor, the Lieutenant or the sergeant
23 who is behind the desk is responsible for narcotics.

24 Q That was not your assignment that evening, correct?

25 A No. I was the Anti crime supervisor.

1 Q Do you as a sergeant perform chemical tests on drugs
2 recovered at the scene of an arrest?

3 A I did not that night, no.

4 Q Would the police officers under your direct supervision
5 that night have been responsible for performing chemical lab
6 tests on the drugs recovered that evening?

7 A The only way you can actually perform those tests is if
8 you are qualified to do so. So in other words, you have to
9 receive the training to do so. When I was in narcotics I was
10 qualified. Once I got promoted that qualification ended. So
11 I had to get retrained. So I was not eligible to do it.

12 As far as I know, neither Police Officer Prince or
13 Police Officer Sullivan were trained at that time to do it.

14 Q Do you have the authority to order the drugs be
15 destroyed?

16 A Absolutely not.

17 Q Did you ever speak with anyone from the Kings County
18 District Attorney's office regarding the arrest of
19 Mr. Robertson?

20 A No, sir, I did not.

21 Q Were you ever contacted by anyone from the District
22 Attorney's office regarding Mr. Robertson?

23 A No, sir, I wasn't.

24 Q Did you ever encourage anyone from the District
25 Attorney's office to proceed with the prosecution of

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1 Mr. Robertson?

2 A No.

3 Q Did you ever testify in Criminal Court about

4 Mr. Robertson's arrest?

5 A No.

6 Q Do you know the outcome of the charges against

7 Mr. Robertson?

8 A I didn't find out the outcome of the charges until the
9 start of this litigation.

10 Q Prior to April 14, 2006, had you ever seen Dwayne
11 Robertson before?

12 A Never.

13 Q Since April 15, 2006, and outside of this courtroom, have
14 you ever seen Mr. Robertson?

15 A No.

16 Q At any time during the April 14, 2006 incident, did you
17 observe Detective Prince choke Mr. Robertson?

18 A Choke, no.

19 Q Did you ever choke Mr. Robertson?

20 A No, I didn't.

21 Q At any time during the incident did you observe Detective
22 Prince strike Mr. Robertson in the head?

23 A I can't say that I did. I know that they were actively
24 engaged in a struggle but I didn't see specifically
25 where -- where he struck Mr. Robertson or where Mr. Robertson

1 struck him.

2 Q At any point during the -- the struggle with
3 Mr. Robertson, did you strike Mr. Robertson in the head?

4 A In the head, no.

5 Q At the time during the struggle with Mr. Robertson, did
6 you punch him?

7 A No, I did not.

8 Q At any time during the struggle with Mr. Robertson, did
9 you strike Mr. Robertson in the head with your baton?

10 A Absolutely not.

11 MR. BROOKS: That's all the questions that I have at
12 this time.

13 THE COURT: Okay. Thank you, Mr. Brooks.

14 Let's take an afternoon break.

15 Don't discuss the case.

16 We will resume in ten minutes.

17 All rise.

18 (The following occurred in the absence of the jury.)

19 THE COURT: We are in recess on the case on trial
20 until 3:35.

21 (Recess taken.)

22 (Continued on next page.)

23

24

25

1 THE COURT: After Sergeant Degl as, you have the
2 other detective?

3 MR. HARVIS: That's it.

4 THE COURT: Be ready to sum up tomorrow.

5 MR. HARVIS: We will.

6 (Jury enters courtroom.)

7 THE COURT: We're ready for the cross.

8 Mr. Hol loway?

9 CROSS-EXAMINATION

10 BY MS. HOLLOWAY:

11 Q Good afternoon, Sergeant Degl as.

12 A Ms. Hol loway.

13 Q You testified earlier that you didn't make the decision
14 to approach Mr. Robertson; is that correct?

15 A That's correct.

16 Q It was Mr. Sullivan who made the decision to approach
17 Mr. Robertson?

18 A Yes.

19 Q It was your understanding that decision was made because
20 Officer Sullivan observed Mr. Robertson smoking something,
21 correct?

22 A The comment that was made was -- I don't remember who
23 said it, was "Let's check out that guy. I think he's smoking
24 something."

25 Q But it is your current understanding that marijuana

1 cigarette was the reason for your approach of Mr. Robertson
2 that evening, correct?

3 A Yes, although at the time I didn't know.

4 Q But at the time Officer Sullivan did say something in the
5 car to the effect let's go talk to that guy, I think he's
6 smoking something, correct?

7 A Yes, we didn't have a whole conversation about it. A
8 short amount of time elapsed between their initial visual
9 contact with Mr. Robertson and our actual physical contact.

10 Q As your car approached Mr. Robertson, got closer to
11 Mr. Robertson, you didn't yourself see any cigarette or any
12 marijuana cigarette that Mr. Robertson may have been smoking,
13 did you?

14 A No, I did not.

15 Q In fact, you didn't ever see or smell any marijuana
16 cigarette, did you?

17 A My position in the right rear of the passenger seat with
18 the window closed, no.

19 Q When you say the window closed, you mean the left rear
20 window was closed?

21 A Yes, the window directly opposite me, the left rear door,
22 that window was closed. On my side, I had it open a quarter
23 of the way.

24 Q You testified that window is tinted?

25 A Yes, all four windows are tinted on that vehicle.

1 Q Which makes it difficult to see out that tinted window at
2 night, correct?

3 A From my advantage point at certain angles, it would be
4 difficult to see.

5 Q Through Officer Sullivan's window you didn't at any point
6 see any cigarette or marijuana cigarette that Mr. Robertson
7 was smoking as you approached him, did you?

8 A No, I did not.

9 Q You didn't at any point smell the smell of marijuana
10 smoke coming through the windows of the car?

11 A No, not at that point, no.

12 Q At any moment?

13 A Later on that evening, of course when the marijuana was
14 vouchered, I smelled marijuana.

15 Q When you are in the car, you didn't smell marijuana smoke
16 coming through the window of the car?

17 A That's right.

18 Q You testified when you're in the back seat of the car,
19 the front seat window is open, the air coming in through the
20 front window flows on you. It was making you cold that
21 evening, correct?

22 A It's not only the air but the speed of the vehicle that
23 really dictates what kind of temperature. The faster the car
24 goes, the more air, the colder it gets. The car is
25 stationary. The wind might come in. You understand the point

1 I ' m maki ng?

2 Q I do. That air coming in, the right-hand side, passenger
3 side wi ndow, the front of the car di dn' t smel l, you di dn' t
4 smel l mari juana smoke, di d you?

5 A I di dn' t smel l any mari juana, no.

6 Q You testifi ed that at a certain point you observed
7 Mr. Robertson, I thi nk you said bring his el bow up reach to
8 his wai st?

9 A That's correct.

10 Q Where was Mr. Robertson when you observed that happeni ng?

11 A On the southeast corner of Pi tkin Avenue and
12 Wi lli ams Avenue.

13 Q Was he on Pi tkin Avenue?

14 A Yes, on the corner. We're at both avenues meet,
15 southeast corner.

16 Q You saw him doi ng that through Sul li van' s wi ndow?

17 A I coul d real ly see through both wi ndows al though I had a
18 much clearer pi cture through Sul li van' s wi ndow. It was open,
19 obvi ously.

20 Q You saw Mr. Robertson reach for his wai st through
21 Officer Sul li van' s wi ndow?

22 A Yes.

23 Q You di dn' t see the mari juana ci garette Mr. Robertson was
24 smoki ng?

25 A I di dn' t see a mari juana ci garette, di dn' t smel l

1 mari j uana smoke.

2 Q When you saw Mr. Robertson reach for his waist, how soon
3 after when he started running was that?

4 A It was immed iately after he started running.

5 Q Was i t before or after Offi cer Prince got out of the car?

6 A He started running before Police Offi cer Prince exi ted
7 the car. That's my recol lecti on of events.

8 Q But he reached for his waist after Mr. Prince exi ted the
9 car?

10 A I bel i eve so, yes.

11 Q But before he turned left onto Wi lliams Avenue?

12 A I woul d say as he was turni ng left onto Wi lliams Avenue.

13 Q If he was turni ng left onto Wi lliams Avenue, runni ng away
14 from Offi cer Prince, correct?

15 A That's correct.

16 Q You fol lowed Offi cer Prince and Mr. Robertson i n your
17 car, correct?

18 A We were paral lel wi th him at one poi nt. We passed him
19 and we drove past Mr. Robertson to cut him off.

20 Q Whi le you were dri vi ng, you coul dn't see what was
21 transpi ring between Offi cer Prince and Mr. Robertson, correct?

22 A Not until I exi ted the vehi cle.

23 Q But you di d observe him reach for his waist?

24 A As he started to run, yes.

25 Q The next ti me you saw Offi cer Prince and Mr. Sul li van,

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1 they were both on the ground, correct?

2 A Yes.

3 Q You di dn' t observe the i n i t i a l contact between
4 Officer Prince and Mr. Sul l i van -- Mr. Robertson?

5 A No, I di d not.

6 Q But you di d observe at one point Offi cer Prince and
7 Mr. Robertson exchangi ng bl ows?

8 A That's correct, they were clearly involved in a struggl e,
9 in a fight in the mi ddle of the street when I fi rst observed
10 them as I exi ted my vehi cle.

11 Q Sergeant Degl as, do you have your baton wi th you?

12 A Yes.

13 Q It is now i n i t's shorter form, correct?

14 A Col l apsed form, yes.

15 Q Coul d you, just so the jury can hear what i t sounds like
16 when you depl oy the baton, coul d you stand up, depl oy the
17 baton for the jury, please?

18 THE WI TNESS: Your Honor?

19 THE COURT: Sure.

20 A I 'll depl oy i t in the same exact manner I di d that ni ght,
21 strai ght down (i ndicati ng).

22 Q The baton makes a noi se when you depl oy i t?

23 A A very di sti nct sound.

24 Q When you col l apse i t on the ground, i t also made a very
25 I oud noi se?

1 A Again, I attribute that to the hollowness of the wood,
2 that's how it amplifies it, the stair (indicating).

3 Q How did Mr. Robertson react when you hit him with the
4 baton?

5 A As I stated before, prior to my strikes that were
6 delivered to Mr. Robertson, he was actively engaged in a fight
7 with one of my officers. Once I delivered the second blow, he
8 stopped. His reaction was, you know, very evident. He
9 brought his knees up to his chest, brought his elbows in,
10 trying to protect himself. At that point, we took full
11 advantage of that because he's no longer fighting, we
12 handcuffed him.

13 Q Did he say anything when you struck him? Did he make a
14 noise, react to the pain of being struck with the baton?

15 A I don't remember him making a noise because I was
16 screaming "Stop resisting."

17 Q It's your testimony earlier there were drops of blood
18 forming on Mr. Robertson's left brow, correct?

19 A No, actually when I first observed blood, it was actually
20 on the pavement, the street directly below Mr. Robertson's
21 face.

22 Q It wasn't drops of blood; it was quite a bit of blood, a
23 pool of blood, correct?

24 A I wouldn't say it was an enormous amount of blood but
25 clearly there was blood flowing from Mr. Robertson's wound,

1 yes.

2 Q There was a pool of blood on the pavement underneath
3 Mr. Robertson's face, correct?

4 A You really have to define pool for me. Swimming pool?
5 No, it's a small, you know, pool of blood about this size
6 (indicating), about the size a little bigger than a quarter.

7 Q Do you recall my taking your deposition on December 17th,
8 2009?

9 A Yes.

10 Q Do you recall being asked this question and giving this
11 answer? This is page 43, line 18.

12 "QUESTION: Did Mr. Robertson say anything to you
13 after he had been struck by the baton?

14 "ANSWER: Did he say anything? You know what, I
15 wasn't really paying attention to what he was saying at that
16 point because my concern with him, my primary concern at that
17 point was my officer, both my officers whether or not they
18 were injured and safe and then after Mr. Robertson had been
19 handcuffed, he was lying on his stomach at that point, I
20 noticed there was a pool of blood forming underneath his,
21 under where his head was, so we turned him over and got him
22 up."

23 Do you recall giving that testimony,
24 Sergeant Degl as?

25 A Yes.

1 Q You testified that you hit someone in the head with a
2 baton, a metal pipe, you could fracture their orbital socket,
3 correct?

4 A Yes, very easily.

5 Q You also testified that there are times when you can use
6 deadly force but you can choose to use less than deadly force,
7 correct?

8 A I believe that was Police Officer Prince that testified
9 to that. That wasn't me. I would agree with that.

10 Q Isn't it also true that you can swing a baton and cause a
11 fracture or cause a concussion but you could also use less
12 force, cause less injury, correct?

13 A I'm sorry, could you rephrase it? I'm not sure what
14 you're getting at.

15 Q Isn't it true you could swing a baton with your full
16 force and that might cause a fracture to an orbital socket or
17 concussions, correct?

18 MR. BROOKS: Objection.

19 THE COURT: Overruled.

20 A Of course.

21 Q You could also swing that baton with less force. That
22 would cause less injury, correct?

23 A Yes, I suppose so, yes.

24 Q Is it your testimony you didn't collect the black object
25 from the storm drain, correct?

1 A That is my testimony, yes.

2 Q The storm drain from which it was collected is on the
3 southeast corner of Pitkin and Williams?

4 A Yes.

5 Q Was that storm drain on Williams Avenue or on Pitkin?

6 A I really don't know. Like I said, I remained with
7 Mr. Robertson. I could observe my officers peripherally, in
8 other words within my field of vision but I didn't focus on
9 them. I was focused on the prisoner because it has happened
10 handcuffed prisoners have tried to escape. My attention was
11 on Mr. Robertson but I could actually see where my officers
12 were. The specific location they went to, I don't know which
13 storm drain they went to. There's actually two storm drains;
14 one on the south side of Pitkin, one on the east side of
15 Williams. They were in the vicinity.

16 Q When Officer Sullivan returned, he showed you what it is
17 that he had recovered from that vicinity, correct?

18 A I believe in his right hand he had the glove, what
19 appeared to be one glove crumpled up and exposed bags of
20 marijuana, small baggies of marijuana. I don't know how many.
21 I didn't count them at the scene, but yes.

22 Q As a police officer, you've had experience collecting
23 marijuana evidence, correct?

24 A Yes, unfortunately, yes, hundreds of times.

25 Q Do you recall the approximate quantity -- you can't

1 remember how many baggi es, but in terms of volume how much
2 mari juana Offi cer Sul i van showed you?

3 A No. Again, at the scene, I really wasn't concerned with
4 the evidence, counting the evidence. I knew it was time to do
5 that at the preci nct. As far as I was concerned, we had two
6 pri ori ti es, a pri soner and an i njured pol i ce offi cer to attend
7 to.

8 THE COURT: Listen to the questi on. Just answer
9 the questi on.

10 THE WI TNESS: I 'm sorry, your Honor.

11 Q Do you have any recol lection of the volume of mari juana?
12 Was it a large handful of mari juana?

13 A It was a handful , yes.

14 Q In separate small Zi pl oc bags?

15 A That's correct.

16 Q Your experience as a pol i ce offi cer doesn't give you any
17 basis on which to approxi mate what the volume of that
18 mari juana was?

19 A No.

20 Q Is it your testimony you struck Mr. Robertson in the
21 thigh, between his hip and his knee wi th your baton, correct?

22 A Yes, mi dway between.

23 Q You struck him twice in the leg. Which leg was it?

24 A The left leg.

25 Q Twice in the left leg wi th a metal pipe that can cause a

1 concussi on i f used on a person, correct?

2 A Yes.

3 MS. HOLLOWAY: I have nothi ng more.

4 THE COURT: Thank you, Ms. Hol loway.

5 Is there any rediect?

6 MR. BROOKS: No rediect.

7 THE COURT: You can step down, Sergeant Degl as.

8 Call your next wi tness.

9 MR. HARVI S: Detective Matthew Sul i van to the
10 stand.

11 THE COURT: Swear the wi tness, please.

12 M A T T H E W S U L L I V A N,

13 having been duly sworn/affi rmed, was examined
14 and testifi ed as fol lows:

15 THE LAW CLERK: Please have a seat, state your name
16 and spell it for the record.

17 THE WI TNESS: Detective Matthew Sul i van,
18 S U L L I V A N.

19 DIRECT EXAMI NATI ON

20 BY MR. HARVI S:

21 Q Good afternoon, Detective Sul i van.

22 A Good afternoon.

23 Q How are you doi ng today?

24 A Good.

25 Q Are you currently empl oyed?

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1 A Yes.

2 Q By whom?

3 A The New York Ci ty Police Department.

4 Q How long have you been empl oyed by the New York Ci ty
5 Police Department?

6 A Just under nine years.

7 Q What is your current rank?

8 A Detective.

9 Q When were you promoted, detecti ve?

10 A November of '09.

11 Q Where are you currently assi gned?

12 A 75th Detective Squad.

13 Q Just bri efl y, what are your duties and responsi bilities
14 as a detective in 75th Precinct Detective Squad?

15 A My primary function is to investigate robberies,
16 burglaries. I also assist in shootings, homi ci des, sexual
17 assaul ts, grand larcenies, thi ngs I like that.

18 Q I would like to focus your attention to April 14th, 2006.

19 On April 14th, 2006 what rank did you hold?

20 A I was a police offi cer.

21 Q Do you remember that day?

22 A Yes.

23 Q Were you worki ng?

24 A Yes.

25 Q What command were you assi gned to?

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1 A 75th Precinct.

2 Q Were you assigned to a particular unit within
3 75th Precinct?

4 A Anti -crime Unit.

5 Q What hours did you work on April 14th, 2006?

6 A I think we worked eight to four.

7 Q Is that 8:00 p.m. to 4:00 a.m.?

8 A Yes.

9 Q Where is the 75th Precinct located?

10 A East New York, Brooklyn.

11 Q How would you describe the general crime level in
12 75th Precinct?

13 A It's historically the most violent precinct in the city.

14 Q Do you know what you were wearing that day?

15 A Plain clothes of some sort.

16 Q Why would you be in plain clothes?

17 A It's the uniform for anti -crime police officers.

18 Q Do you recall what police equipment you had with you that
19 night?

20 A I had my shield, my vest, my radio, my gun, extra
21 magazines, handcuffs.

22 Q Were you carrying a baton?

23 A No.

24 Q Were you wearing anything that identified you as a police
25 officer?

1 A I have my police shield around my neck sitting on my
2 chest.

3 Q What is anti-crime?

4 A Anti-crime is a subset of patrol inside the police
5 department, focuses on violent crimes, shootings, gun-related
6 crimes, robberies, burglaries.

7 Q What do you typically do when you're on an anti-crime
8 squad, what is involved?

9 A We patrol the highest crime areas inside the precinct
10 that happened to be springing up at that time. We go looking
11 for criminals.

12 Q Do you that on foot or in a vehicle?

13 A A vehicle.

14 Q Is it fair to say you sort of drive around looking for
15 crime?

16 A It's a good assumption, yes.

17 Q The vehicle that you drive around in, is that a marked or
18 unmarked police vehicle?

19 A Unmarked vehicle.

20 Q Do you recall who were you partnered with on April 14th,
21 2006?

22 A Police Officer Prince.

23 Q Do you recall who your supervisor was that night?

24 A Sergeant Deglas.

25 Q Had you worked with Detective Prince and Sergeant Deglas

1 prior to April 14th, 2006?

2 A Yes.

3 Q That evening, where were you seated in the vehicle?

4 A I was the driver.

5 Q Did there come a time you were patrolling in the vicinity
6 of Pitkin Avenue and Williams Avenue?

7 A Yes.

8 Q Is Pitkin and Williams Avenue within the confines of the
9 75th Precinct?

10 A Yes, it is.

11 Q What time of day was it when you reached the vicinity of
12 Pitkin and Williams?

13 A Around midnight.

14 MR. HARVIS: This document is not yet in evidence.

15 Q I'll show you a document, 3 pages, previously marked for
16 identification as Defendants' Exhibit G. This is the first
17 page. This is the second page and this is the third page.

18 Do you recognize the document I'm showing you?

19 A Yes.

20 Q What is it?

21 A That's my memo book, a portion of my memo book.

22 Q What is a memo book?

23 A It's a note pad that we keep our daily activities that we
24 conduct while we're at work.

25 Q Is the writing in this document your handwriting?

1 A Yes.

2 Q Did you prepare this document in the ordinary course of
3 your duties as a New York City Police Department officer?

4 A Yes.

5 MR. HARVIS: At this time I would like to offer
6 into evidence Defendants' Exhibit G.

7 THE COURT: Any objection?

8 MS. HOLLOWAY: No objection.

9 THE COURT: Received.

10 (So marked.)

11 Q Detective Sullivan, I'm going to show you this. This is
12 the first page of the document. Then I'm going to show you
13 the second page and ask you if you can read it on your screen
14 there, read what you have written there. As you're going
15 through it, translate police jargon into common language.

16 A Friday, FRI, the day of the week, the date 4/14/06,
17 1930 times 0405. That's 7:30 at night by 4:05 in the morning.
18 The next line is assigned to 75th Precinct, 1930, the next
19 line down, present for duty, 1940, assigned to anti-crime.
20 Next line down is R & D which stands for radio motor patrol.
21 Should I explain it?

22 THE COURT: No, spare us that.

23 A The vehicle number, P 0 Prince, my partner, 1945 98, a
24 radio term for reassuming or starting patrol. That would be
25 on the radio and then 0040, one under Williams and Pitkin.

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1 Q One more entry. What does that say?

2 A 0558 hours, EOT as end of tour.

3 THE COURT: One under means one under arrest?

4 THE WITNESS: Yes, sir.

5 Q When you work in the vicinity of Pitkin and Williams,
6 which street were you traveling down?

7 A Pitkin.

8 Q Is Pitkin a one-way or two-way street?

9 A It's a two-way.

10 Q Just briefly describe for the jury what the area in the
11 vicinity of Pitkin and Williams Avenue was like in April of
12 2006.

13 A Dark out, near midnight. Streets have street lights,
14 lights from the building, industrial area with warehouses,
15 some small factories, storage, commercial area.

16 Q What did you observe when your vehicle reached the
17 vicinity of Pitkin and Williams?

18 A A male on the south sidewalk.

19 Q Do you now know who that person was that night?

20 A Yes.

21 Q Who was it?

22 A Mr. Robertson.

23 Q What, if anything, drew your attention to Mr. Robertson?

24 A After observing him, I believe he was smoking a marijuana
25 cigarette.

1 Q What made you think it was a marijuana cigarette that he
2 was smoking?

3 A Well, to look at it, its shape, non-uniform structure,
4 also color was darker and the way he was smoking.

5 Q Can you demonstrate for the jury the way you observed him
6 smoking that evening?

7 A With his index finger and thumb, back of the palm to the
8 mouth (indicating).

9 Q Prior to April 14th, 2006, had you ever seen someone
10 smoking a marijuana cigarette before?

11 A Yes.

12 Q Can you describe for the jury what the portion of the
13 marijuana cigarette you could observe looked like to you that
14 evening?

15 A Probably the end of it.

16 Q How fast was your vehicle traveling when you observed
17 what you believed to be Mr. Robertson smoking marijuana?

18 A Pretty slow.

19 Q Do you know what the speed limit is in that area?

20 A No, not offhand. I believe it's 30 if it's not marked.

21 Q Do you think you were going above the speed limit?

22 A No, well under.

23 Q Was Mr. Robertson with anyone when you saw him?

24 A No, he was alone.

25 Q When you observed Mr. Robertson smoking what you believed

1 to be marijuana, what did you do?

2 A I moved closer to investigate.

3 Q What did you do with your vehicle in order to move
4 closer?

5 A I crossed the double yellow, driving westbound, crossed
6 the double yellow, right up against the curb and Mr. Robertson
7 was right parallel to my window.

8 Q Once you had Mr. Robertson parallel to your window, what
9 happened next?

10 A The window was down. I engaged him in conversation, I let
11 him know I was the police. Exactly what I said I'm not sure,
12 probably in effect, hey buddy, how are you doing? Police
13 department. Could I have a minute of your time, sum and
14 substance, like that.

15 Q You said your window was down, right?

16 A Yes.

17 Q Do you know when you had rolled your window down?

18 A My window stays down when I do anti-crime.

19 Q Is that for the reasons Sergeant Degras mentioned?

20 A Yes, sir.

21 Q Do you remember any recollection of smelling marijuana
22 before you spoke to Mr. Robertson?

23 A This date I don't remember.

24 Q When you spoke to Mr. Robertson, were you still inside
25 your police vehicle?

1 A Yes.

2 Q What, if anything, did you do while you were speaking to
3 Mr. Robertson?

4 A I was attempting to put the car in park, exit the
5 vehicle.

6 Q Had you begun the process of exiting the vehicle?

7 A I believe I had the door open.

8 Q Do you know whether Sergeant Degras or Detective Prince
9 had gotten out of the police vehicle or started to get out of
10 the vehicle -- sorry, excuse me, withdrawn.

11 When you asked Mr. Robertson to have a word with
12 you, what happened next?

13 A He paused for a brief moment, said something. In sum and
14 substance he said something to the effect of no, I'm not
15 stopping and he ran.

16 Q Do you know whether Sergeant Degras or Detective Prince
17 had gotten out of the vehicle or started to get out of the
18 vehicle at the moment the plaintiff ran?

19 A I don't know.

20 Q What happened after Mr. Robertson started running?

21 A He started running and Police Officer Prince exited the
22 vehicle and gave chase on foot.

23 Q Do you know why Mr. Robertson started running?

24 A No.

25 Q What did you do after Detective Prince began his foot

1 pursuit?

2 A After he passed in front of me, I put the car in gear. I
3 had it is already in gear, I'm not really sure at this point,
4 went west on Pitkin, left off the corner, that was Williams.
5 I drove the car past Prince, then past Mr. Robertson who was
6 running ahead of Officer Prince.

7 Q What if anything did you observe as you were driving west
8 on Pitkin?

9 A I observed something fall from Mr. Robertson's person.

10 Q Can you describe for the jury what you saw drop as
11 Mr. Robertson ran?

12 A Black dark object.

13 Q When Detective Prince got out of the vehicle, why didn't
14 you get out of the vehicle also?

15 A I'm the driver. Having the vehicle is a distinct
16 advantage in those situations.

17 Q When Mr. Robertson started running, what, if anything
18 were you focusing on?

19 A My partner and also Mr. Robertson.

20 Q Were you focused at all on what Mr. Robertson did with
21 the marijuana that you had seen in his hand when he was
22 smoking it?

23 A No, I don't believe so.

24 Q What happened after you made a left onto Williams Avenue?

25 A Made a left onto Williams, drove past both of them. I

1 got out a sufficient amount in front at which time I stopped
2 the vehicle, Sergeant Deglas exited.

3 Q Detective Prince was chasing after Mr. Robertson?

4 A Yes.

5 Q Did you actually see Detective Prince reach
6 Mr. Robertson?

7 A No, sir.

8 Q Were you able to see what was going on between plaintiff
9 and Detective Prince when you stopped the car and
10 Sergeant Deglas got out?

11 A I briefly glanced behind my right shoulder and saw a
12 violent struggle going on between Prince and Robertson.

13 Q When you were observing this struggle, were Prince and
14 Robertson on the ground or standing up or something else?

15 A I believe they were standing up at first. Then they were
16 on the ground.

17 Q Could you see whether punches were being thrown and if so
18 by whom?

19 A I couldn't see the exact who was doing what. It just
20 looked like a violent struggle.

21 Q Do you know where Sergeant Deglas went when he got out of
22 the vehicle?

23 A He went right to the two of them.

24 Q Did you see Sergeant Deglas reach the struggle --

25 A No.

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1 Q No, he did not?

2 A No.

3 Q Did you exit the vehicle when the sergeant did?

4 A No.

5 Q Why didn't you get out of the vehicle when the sergeant
6 did?

7 A At that point it was just Detective Prince locked up with
8 him. It's happened before where subjects are trying to get
9 away. I have the vehicle which was able to cut him off or if
10 he went the other way, I could speed past him, thereby boxing
11 him in.

12 Q Is it fair to say that the reason you stayed in your car
13 you thought Mr. Robertson could still get away?

14 A At that point it was still uncertain whether he was under
15 control.

16 Q What did you do next?

17 A I was backing the car up.

18 Q Did you call for backup at that time?

19 A No.

20 Q Why not?

21 A I didn't deem it necessary.

22 Q How far did you back the car up?

23 A I would say two to three car lengths.

24 Q Did you back the car up to where the struggle was
25 actually happening?

1 A The rear of the car was by where the struggle, I guess
2 ended.

3 Q What did you do then?

4 A I exited the car, came around the back.

5 Q Why did you decide to exit your vehicle at that point?

6 A At that point he was on the ground with Officer Prince,
7 seemed like the struggle had died down a little bit,
8 Sergeant Deglas was there. At that time I deemed it
9 responsible to get out of the car.

10 Q What, if anything, did you observe when you got out of
11 that police vehicle?

12 A I believe he was in the process of getting cuffed. I
13 believe they had one cuff on him, trying to get him in the
14 other cuff.

15 Q At any time did you observe Detective Prince actually
16 strike plaintiff?

17 A Not that I remember.

18 Q At any time did you observe Sergeant Deglas strike
19 plaintiff?

20 A No, I don't think so.

21 Q At any time did you observe anyone at any time strike
22 Mr. Robertson in the face with a baton?

23 A No, I didn't.

24 Q Was Mr. Robertson handcuffed when you got out of your
25 vehicle?

1 A He was, I think, one on, trying to get him into the other
2 one.

3 Q What did you do at that point?

4 A It's a little -- I remember distinctly helping him to
5 his feet. I believe I was on the ground with him so I
6 probably assisted in the handcuffing.

7 Q Do you recall how you did that?

8 A We rolled him over onto his bottom, butt, told him to
9 plant his feet. Then I was going to pick him up.

10 Q Do you know if Detective Prince was injured?

11 A He was definitely moving around with some concern. He
12 definitely had discomfort. He was looking at his hand or
13 wrist with some concern.

14 Q Do you know if Mr. Robertson was injured?

15 A I believe he had a cut.

16 Q Would you say there was a lot of blood on Mr. Robertson's
17 face?

18 A I've seen a lot of blood. It's tough for me to be the
19 judge of it, but he was bleeding, not like not pouring out of
20 him.

21 Q After you helped lift Mr. Robertson to his feet, what
22 happened next?

23 A I remember placing him against the back of the car,
24 giving him a further search for weapons or contraband.

25 Q Why did you conduct a search of Mr. Robertson at that

1 time?

2 A At that point he was under control. Sergeant Deglas and
3 Officer Prince are recovering from the struggle.

4 Q At the time you searched Mr. Robertson, did you know for
5 certain whether or not he had any kind of weapon on him?

6 A No, not until I was done with the search.

7 Q Did you did your search of Mr. Robertson's person
8 disclose any contraband?

9 A No, I didn't find anything on him.

10 Q After you searched Mr. Robertson, what happened next?

11 A I asked the other officers if they were okay. I told
12 him -- one of us stayed with Mr. Robertson. I believe it was
13 Sergeant Deglas and Officer Prince stayed with Mr. Robertson.
14 I gave a search of the area to see what he had dropped when he
15 had ran.

16 Q When you left plaintiff in the custody of Sergeant Deglas
17 and Detective Prince, was he standing up?

18 A I believe so, yes.

19 Q You said you searched the area?

20 A Yes.

21 Q What did that search consist of?

22 A I searched the area where the struggle was. Then I went
23 back, I searched the area where it began.

24 Q Did you use your flashlight as part of your search?

25 A Yes.

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1 Q Did you find anything?

2 A Yes.

3 Q What did you find?

4 A I found a black glove, like a batting glove type,
5 contained several Ziploc baggies of marijuana.

6 Q Where did you find that glove and marijuana?

7 A On the sewer grade or drainage grate of the storm drain
8 or sewer.

9 Q Where geographically was that?

10 A That would have been on Williams towards the southeast
11 corner.

12 Q Southeast corner of Williams and Pitkin?

13 A Yes, on the Williams side.

14 Q Was anything else recovered during your search of the
15 general area?

16 A Another black glove was recovered.

17 Q Do you know where that other black glove was found?

18 A I don't remember.

19 Q Did the second black glove match the first black glove?

20 A Yes, they did.

21 Q At the time you recovered it, what did you do with the
22 gloves and the marijuana?

23 A I put them in my pocket.

24 Q Did you find the marijuana cigarette that you had
25 observed Mr. Robertson smoking?

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1 A No, I didn't.

2 Q Did you look for it?

3 A Yeah.

4 Q Do you have any idea what might have happened to it?

5 A It could have gone down the drain where I recovered the
6 marijuana. It could have gone into the fenced-in commercial
7 property on that corner. I wasn't able to observe it, no.

8 Q How much time did you spend conducting the total search
9 of the area?

10 A Minutes.

11 Q Why didn't you spend more time on your search?

12 A At that point it looked like my partner was in a lot of
13 discomfort, prisoner needed to have medical attention. I
14 deemed it was more important to return to the precinct.

15 Q What happened next when the search was over?

16 A We returned to the precinct.

17 Q You said Mr. Robertson needed medical care, right?

18 A Yes.

19 Q Why didn't you call an ambulance to the scene of the
20 arrest?

21 A His injuries didn't seem to be life threatening in any
22 way.

23 Q Did you ever observe Mr. Robertson lose consciousness?

24 A No.

25 Q Who was Mr. Robertson's arresting officer that night?

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1 A I was.

2 Q What are the duties of an arresting officer when they
3 make an arrest?

4 A Process the arrest paperwork, voucher the property if
5 property is recovered, speak to the DA's office.

6 Q Can you approximate how many times you've been the
7 arresting officer for an arrest?

8 A Probably over 250.

9 Q What happened when you got back to the precinct?

10 A I went to return to the precinct. We collected the
11 subject's pedigree information which is name, date of birth,
12 address, that stuff, stuff of that nature.

13 (Continued on next page.)

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1 EXAMI NATI ON CONTI NUES

2 BY MR. HARVI S:

3 Q Did Mr. Robertson receive medical attention at the
4 precinct?

5 A Yes. I think a bus -- an ambulance was ordered for him.

6 Q Do you know who ordered it?

7 A I believe one of the supervisors did.

8 Q Do you have any idea about how long after you arrived at
9 the precinct the EMS people arrived?

10 A It wasn't there for the entire thing, but I believe
11 pretty quickly.

12 Q Do you know if Mr. Robertson went to the hospital?

13 A Yes.

14 Q Did you transport Mr. Robertson to the hospital?

15 A No, I didn't.

16 Q Why not?

17 A I am the arresting officer. Paperwork has to be in,
18 expedited.

19 Q Did you ever tell Mr. Robertson not to go to the
20 hospital?

21 A No.

22 Q Did you ever hear anyone tell Mr. Robertson that night
23 not to go to the hospital?

24 A No.

25 Q Do you know if Detective Prince went to the hospital?

1 A Yes, he did.

2 Q Did you go with Detective Prince to the hospital?

3 A I don't believe I went with him initially. I might have
4 gone later on to check up, see if he's okay.

5 Q Detective, when you sit down to do arrest paperwork and
6 you are the arresting officer, what is the first thing that
7 you do?

8 A The online generally.

9 Q What is an online?

10 A Online is the paperwork that's done for an arrest.

11 Q Okay. I am now going to show you -- this has previously
12 been received into evidence as Plaintiff's Exhibit 11.

13 Let me do this -- I think this is out of order.

14 This is actually the first page of this document, is that
15 right, detective?

16 A That's correct.

17 Q Okay. Now, just take a look at this. It -- does -- is
18 this the online that you prepared for the arrest of Dwayne
19 Robertson?

20 A Yes.

21 Q Do you know when you prepared it?

22 A Sometime that morning.

23 Q What happens to this form once you complete it?

24 A This form is submitted to the LAPS officer who does the
25 data entry and enters it into a system.

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1 Q This handwritten form is entered by someone in a computer
2 system?

3 A Yes.

4 Q Are you personally involved in the process of inputting
5 this handwritten form into the computer?

6 A No.

7 Q You are not the person who actually enters it into the
8 computer, right?

9 A No.

10 Q Can you read for the jury what you listed under charges,
11 just the description, please?

12 A Description, first one is going to be tampering with
13 evidence. The second one is CPM, assistance for criminal
14 possession of marijuana. Third one, resisting arrest. And
15 the fourth one is going to be assault on a PO.

16 Q Now, why did you list these charges on this form?

17 A Because those were the charges that I observed him to
18 commit.

19 Q Whose decision was it to list these charges?

20 A Mine and I also consulted with my supervisor.

21 Q By listing these charges on this form, does that mean
22 that the District Attorney is going to prosecute Mr. Robertson
23 for these particular charges?

24 A No.

25 Q Why not?

1 A It is up to them.

2 Q Now, in the -- let me just -- in the arresting officer
3 section under force used, can you -- can you tell me what that
4 says?

5 A Force used, yes. Type, physical force and baton were
6 checked.

7 Q Now, why did you complete the form in that way?

8 A Because during the apprehension of the subject, physical
9 force was used and also a baton.

10 Q How did you know that a baton had been used?

11 A I believe Sergeant Deglas informed me.

12 Q Now, detective, why -- you see here on the left it says
13 arresting officer next to all this information?

14 A Yes, I do.

15 Q Why would the Sergeant Deglas's use of a baton be listed
16 in the section for the arresting officer?

17 A Well, there is no box on the form for assisting officers.
18 And this I felt was the most truthful way to fill it out.

19 Q Okay. Similarly, under arresting officer, it says,
20 the -- it says -- right here, it says arresting officer
21 injured and both yes and no have been checked.

22 Is that right?

23 A Yes.

24 Q Why is that?

25 A Very few of my arrests that -- is the arresting officer

1 injured. So after doing so many arrests and, you know, you go
2 through checking and you know you pretty much do it almost by
3 memory sometimes. I mistakenly checked that there was no
4 officer injured. So I went back and corrected my mistake with
5 the X and the circle around the yes.

6 Q Detective, you were not injured that night, right?

7 A No.

8 Q Why would Detective Prince's injuries be listed in the
9 arresting officer section of this paperwork?

10 A Pretty much the form doesn't allow for the assisting
11 officer is injured. I felt that was the most truthful way to
12 fill it out.

13 Q Now, I am going to direct you down here to, in the
14 defendant information section.

15 A Yes.

16 Q Under type of drug used, you checked none. Right?

17 A Yes.

18 Q Now, why did you check none even though you observed
19 Mr. Robertson using marijuana?

20 A I never recovered the marijuana cigarette. So I didn't
21 charge him with it. Because I couldn't prove it.

22 Q Okay. Now, I am going to turn your attention down here
23 to where it says, narrative. I have just -- I will ask you to
24 read that narrative portion for the jury, please, if you can?

25 A At TPO, which stands for time, place and occurrence,

1 above perp, stands for perpetrator, did throw two gloves full
2 of marijuana down drain. When AO attempted to arrest perp,
3 perpetrator, perp did flail his arms and legs at arresting
4 officers causing pain and swelling to officer's hand and back.

5 Q Now, why didn't you include in your narrative of the
6 events that you saw Mr. Robertson smoking a blunt?

7 A There really just wasn't any room in the small area given
8 and I wanted to have the top charges on there.

9 Q Similarly, you said that there were two gloves full of
10 marijuana, but what you just testified to is that you only
11 recovered one glove that actually had marijuana in it, right?

12 A That's what I recall, yes.

13 Q So how come you put in the narrative section that you
14 recovered two gloves full of marijuana?

15 A Honestly, I felt that was just the easiest way and the
16 smallest space provided to put in two gloves were recovered.

17 Q What did you do with the marijuana and the gloves that
18 you had recovered then?

19 A I vouchered them.

20 Q I am now showing a document that's previously been
21 admitted into evidence under -- as PX-9.

22 Is this one of the vouchers that you prepared that
23 evening?

24 A Yes.

25 Q The -- this form was completed by you with the exception

1 of the signature of your -- of the desk officer, is that
2 right?

3 A No. That's Sergeant Deglas's signature.

4 Q Oh, okay. Okay. Apologize.

5 But the typing that was done, the form is actually
6 typed on a typewriter, is that right?

7 A Yes, it is.

8 Q Okay. You are the one who is actually sitting at the
9 typewriter typing it up?

10 A Yes, sir.

11 Q Why did you list 18 zip locks of marijuana on this form?

12 A After counting them up, that's what were inside the
13 glove.

14 Q So -- and in addition to preparing this form, is there
15 anything actually done with the marijuana itself?

16 A It is placed in a narcotics envelope, which you can see
17 at the bottom of the narrative, and then you can see NARCO
18 envelope and then -- did I --

19 Q You have to hit the lower right corner to clear that.

20 A Oh. Narcotics envelope and then it is placed in a
21 security envelope and it is given back to the desk officer,
22 whoever is working there.

23 Q So once -- once that process is completed, this document
24 has been prepared, the marijuana has been placed into that
25 envelope, and it is given to the desk officer, where is it

1 stored?

2 A In the drug locker.

3 Q What is a drug locker?

4 A Drug locker, on the 75th, it is like a converted mailbox.

5 The way you see one on the street where you drop it in and you
6 close it up. So you can only make deposits.

7 Q Okay. It is like a drop box?

8 A Yes. It looks just like a mailbox that you see on the
9 street though.

10 Q Where in the 75th Precinct is that locker located?

11 A It's located directly behind the desk sergeant.

12 Q Are you aware of who has access, or I guess in 2006, who
13 had access to the narcotics locker?

14 A Whoever was assigned as desk sergeant at the time.

15 Q In April of 2006, did you have access to the narcotics
16 locker at the 75th Precinct?

17 A No.

18 Q Have you ever accessed the narcotics locker at the
19 75th Precinct?

20 A No.

21 Q Do you know what happened ultimately to the marijuana
22 listed on this voucher?

23 A I believe it was destroyed.

24 Q Is it uncommon for marijuana to be destroyed?

25 A No.

1 Q When you voucher mari juana, are you responsi ble as the
2 arresting offi cer for sending i t to the laboratory for
3 analysis?

4 A No.

5 Q Do you know who does that?

6 A No.

7 Q Are you responsi ble as the arresting offi cer for
8 preparing what i s known as a corroborating affi davit?

9 A No.

10 Q Do you know who does that?

11 A A member of ECAB or DA's offi ce.

12 Q Once you had prepared the voucher and secured the
13 mari juana i n the envelope and gi ven i t to the desk offi cer,
14 did you personal l y have any obl i gati on to do anything el se
15 wi th that mari juana?

16 A No.

17 Q I am now showi ng you what's previ ousl y been entered i nto
18 evi dence as PX-10.

19 Is this the voucher for the two bl ack gl oves that
20 you found that ni ght?

21 A Yes, i t i s.

22 Q Is there any di fference i n the process that happens when
23 you are voucheri ng gl oves than there i s when you are
24 voucheri ng mari juana?

25 A Besi des you -- bei ng just put i t i n a regular securi ty

1 envelope. You don't have to put it in a special narcotics
2 envelope. But as far as I am concerned, no, I just -- I give
3 both -- all the property to the desk officer.

4 Q Okay. Do you -- do you know what happened to the gloves
5 that are listed on this voucher?

6 A I believe they went to the property clerk.

7 Q Did you prepare any paperwork related to Detective
8 Prince's injuries that evening?

9 A Yes.

10 Q What paperwork would you have prepared?

11 A An aided card.

12 MR. HARVIS: Your Honor, I would like to show an
13 exhibit that's only for the witness, please.

14 THE COURT: Okay.

15 Q Detective, I am now showing you what has been marked for
16 identification as Defendant's Exhibit F. Just take a look at
17 this, please.

18 What is this document, detective?

19 A This is police department aided report worksheet.

20 Q What is an police department aided report worksheet?

21 A It is a report generated when there is an injury to a
22 complainant or a member of the service.

23 Q Who prepared this particular aided report worksheet?

24 A I did.

25 Q Do you know when you prepared it?

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1 A Sometime that morning.

2 Q Does your signature appear on this document?

3 A Yes.

4 Q Did you prepare this document in the ordinary course of
5 your duties as a New York City Police Department officer?

6 A Yes.

7 Q Do you have a duty to record the information in this
8 document accurately?

9 A The best of my ability, yes.

10 Q Did you in fact record the information in this document
11 accurately?

12 A Yes, I did.

13 Q To your knowledge, is this document maintained in the
14 ordinary course of business of the New York City Police
15 Department?

16 A Yes.

17 MR. HARVIS: Your Honor, at this time I would like
18 to have this document admitted into evidence as Defendant's
19 Exhibit F.

20 THE COURT: Any objection?

21 MS. HOLLOWAY: No objection.

22 THE COURT: Received.

23 (So marked.)

24 Q Detective, it's -- would you please read the narrative
25 portion of this document for the jury?

1 A At the TPO, time, place, occurrence, MOS, referring to
2 Officer Prince, aided, injured his right hand and back while
3 effecting a lawful arrest of combative perp, perpetrator.

4 Q MOS means member of the service?

5 A That is correct.

6 Q You meant Detective Prince, right?

7 A Yes, sir.

8 Q Detective Prince's information is actually listed in the
9 other portion.

10 Let me just turn this around so you can see?

11 This information all relates to Detective Niles
12 Prince, right?

13 A Yes.

14 Q Detective, did you speak with anyone in the District
15 Attorney's office about the arrest of Dwayne Robertson?

16 A Yes.

17 Q Do you know who you spoke to?

18 A A member of ECAB.

19 Q What is ECAB?

20 A ECAB is the Kings County DA's office intake for new
21 arrests.

22 Q Do you recall how you spoke to the person at ECAB?

23 A By phone.

24 Q Do you know if you called them or if they called you?

25 A They usually call.

1 Q What did you tell them when you spoke to them?

2 A I just gave them a brief synopsis of the events that
3 transpired earlier that morning.

4 Q Do you know who drafted the Criminal Court complaint in
5 this case?

6 A That would be ECAB.

7 Q Did ECAB or anyone at the District Attorney's office ask
8 you what charges should be brought against Mr. Robertson?

9 A No.

10 Q Did --

11 THE COURT: ECAB is an acronym for what?

12 MR. HARVIS: Early case --

13 THE COURT: Not you.

14 MR. HARVIS: I believe it's early --

15 THE COURT: You are not the witness.

16 MR. HARVIS: I'm sorry.

17 THE WITNESS: I apologize. I don't know what it
18 stands for.

19 THE COURT: It is not a person, right?

20 THE WITNESS: No. It is --

21 THE COURT: It is an entity down at the DA's office?

22 THE WITNESS: Yes. It is a subsection of the DA's
23 office.

24 Q Did anyone at the District Attorney's office ask you
25 whether or not Mr. Robertson should be prosecuted?

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1 A No.

2 Q Was the arrest paperwork that you completed that morning
3 provided to the District Attorney's office?

4 A Yes.

5 Q After your phone call with the person at ECAB, did anyone
6 from the Kings County District Attorney's office ever contact
7 you to discuss the April 14, 2006, incident?

8 A No, I don't believe so.

9 Q After your phone call with ECAB, did you call the
10 District Attorney's office to discuss Mr. Robertson or his
11 prosecution?

12 A No.

13 Q Did you ever testify in Criminal Court regarding
14 Mr. Robertson's arrest?

15 A No.

16 Q Are you aware of the outcome of the charges against
17 Mr. Robertson?

18 A Yes.

19 Q When did you become aware of the outcome of those
20 charges?

21 A During this proceeding.

22 Q Prior to April 14, 2006, had you ever seen Dwayne
23 Robertson before?

24 A No.

25 Q Have you, aside from seeing him in this courtroom, have

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1 you ever seen Mr. Robertson since April 15, 2006?

2 A I don't believe so.

3 Q Did you plant marijuana on Dwayne Robertson on April 14,
4 2006?

5 A No.

6 Q Did you observe anyone plant marijuana on Dwayne
7 Robertson on April 14, 2006?

8 A No.

9 MR. HARVIS: I have no further questions.

10 THE COURT: Thank you, Mr. Harvis.

11 Mr. Valdes, any cross?

12 MR. VALDES: Yes, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. VALDES:

15 Q Good afternoon, Detective Sullivan?

16 A Good afternoon.

17 What's your name, sir?

18 Q Hector Valdes.

19 Detective Sullivan, when you first spotted
20 Mr. Robertson on the night of April 14th, early morning of
21 April 15th, you had never seen or met Mr. Robertson before, is
22 that correct?

23 A I don't believe so, no.

24 Q So you had no prior knowledge about Mr. Robertson?

25 A No, sir.

1 Q At that time you were not investigating a tip that had
2 been called in about anybody matching the description of
3 Mr. Robertson; is that correct?

4 A I don't believe so.

5 Q So the -- I believe you have testified that the decision
6 that you made to approach Mr. Robertson was based entirely on
7 what you observed that evening?

8 A Yes.

9 Q When you first spoke to Mr. Robertson, did you show him
10 your badge?

11 A I was in the car. My badge was on my -- on my chest. He
12 may be -- he probably was able to see it. But I didn't hold
13 it up. No, I did not.

14 Q Is the badge contained in sort of a wallet that can open
15 and close or is it fully displayed at all times?

16 A It's just the -- I don't know exactly what it's made out
17 of. But the metal badge with the like a safety pin through
18 the back. And I had it with a metal -- the most common way is
19 the thing you see at the bank that holds the pen in there,
20 that beaded thing, I had that holding it around my neck.

21 Q It is not actually covered by a wallet?

22 A No, no, it was just sitting there on my chest.

23 Q I believe you have testified that the observations that
24 led to your decision to approach Mr. Robertson were two
25 things. One, the observation of the actual cigarette that he

1 was holding, and secondly, the way that he was holding the
2 cigarette; is that correct?

3 A Yes.

4 Q Detective Sullivan, you did not smell marijuana as you
5 approached Mr. Robertson, correct?

6 A I can't remember at this time.

7 Q But I believe you testified on direct that you did not?

8 A I said I can't remember. I can't remember if I did or
9 didn't.

10 Q Do you recall anybody in the car saying that they had
11 smelled marijuana?

12 A No, I don't remember that.

13 Q Your window was closer to Mr. Robertson than Officer
14 Prince's window was, is that correct?

15 A I believe so, yes.

16 Q Can you describe the actual appearance of the cigarette
17 that you saw Mr. Robertson carrying?

18 A Small, the exact length, not exactly sure of, because I
19 don't know how much was actually hidden in his thumb but it
20 was dark in color, non-uniform in shape, and semi-broken.

21 Q Detective Sullivan, you have testified that your car was
22 in the westbound lane of Pitkin Avenue; is that correct?

23 A Yes.

24 Q Mr. Robertson was walking along the southern sidewalk on
25 Pitkin Avenue?

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1 A Yes.

2 Q Approximately how far would you say you were from
3 Mr. Robertson when you first spotted him?

4 A The -- first spotted him smoking, what I believe to be,
5 or just first spotted him?

6 Q When you first spotted him and believed that he was
7 smoking marijuana.

8 A Approximately three to four car lengths, two to three,
9 three to four.

10 MR. VALDES: Pull up PX-33, please. This is already
11 in evidence.

12 THE COURT: Yes.

13 Q Detective Sullivan, do you recognize this scene as a
14 picture of Pitkin Avenue facing westward?

15 A We'd be at like the intersection of Alabama, right?

16 Q Right. The street immediately to the east of Williams.

17 A Okay, yes, yes. You asked if this is Pitkin?

18 Q This is Pitkin facing towards Williams?

19 A Yes, sir. Yes, sir.

20 Q So you -- your car would have been next to -- to the left
21 of some of these large trucks that are shown in this picture,
22 is that about right?

23 A Yes.

24 Q Mr. Robertson would be walking along this sidewalk next
25 to this brick building?

1 A Maybe a little up towards the fence.

2 THE COURT: The brick building on the right of the
3 photo?

4 THE WITNESS: The left of the photo, sir. My car
5 would be on the right, somewhere between these two trucks
6 here.

7 THE COURT: Okay.

8 Q Approximately how many feet -- you said three to four car
9 lengths behind him. But how many feet?

10 A No. From him, sir?

11 Q From him. Diagonally from him?

12 A Yes.

13 Q Okay. This picture was taken during the daytime. The
14 scene on that actual evening was, I imagine, much darker than
15 is reflected here, is that correct?

16 A It's -- it was dark out because it was midnight, but it
17 is a pretty well lit street.

18 Q So there are street lamps on this street?

19 A Yes. You could see they are up and down. Then you have
20 building lights.

21 Q Okay. The street lamps face over towards the street as
22 opposed to the sidewalk, correct?

23 A Yes. But they -- they encompass the sidewalk also, when
24 they are lit.

25 Q Do you see any lights in this photograph on the building

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1 on the left, where Mr. Robertson was walking?

2 A There might be. It's not a completely -- I don't see any
3 readily available. But I mean, it's not a great -- I am not
4 going to bet my life on it, that there is not lights on
5 there.

6 Q I am asking you can't --

7 A I can't see them on here, no.

8 Q Were there any cars parked between you and the sidewalk
9 on the left-hand side, or was it deserted?

10 A I believe there was no cars either side of the street.

11 Q Detective Sullivan, you wear eyeglasses, correct?

12 A Yes. And contacts.

13 Q Do you normally wear either the eyeglasses or contacts
14 when you are on patrol?

15 A It varies. You know, there is no rule -- I always wear
16 them, I never wear them. It can vary.

17 Q Sometimes you are on patrol where you are wearing neither
18 your eyeglasses nor your contact lenses?

19 A No. I wouldn't -- you don't want me driving without
20 the -- I'd wear one or the other.

21 Q Okay. Detective Sullivan, it is your testimony that
22 despite the relatively dark lighting conditions and the
23 distance that you had from Mr. Robertson, that you were able
24 to see the size and the color and the shape of the cigarette
25 that he was smoking; is that correct?

1 A Approximatel y, approximatel y.

2 Q Now, the other basis for your decision to approach
3 Mr. Robertson besides seeing the cigarette was the way that he
4 was smoking it, is that correct?

5 A Yes, sir.

6 Q Can I trouble you to demonstrate one more time how he was
7 smoking the cigarette?

8 A Thumb and forefinger. I mean, index finger. Index
9 finger. Like this.

10 Q So he was using his right hand between his thumb and his
11 forefinger. I'm sorry. His index finger and his thumb and he
12 had the other three fingers sort of up or --

13 A I think up.

14 Q Okay. He had that pressed against his lips?

15 A Yes. At one point or another.

16 Q Okay. Detective Sul l i van, you said that you approached
17 him from the rear. You sort of looked over until you had
18 become parallel with him?

19 He was directly to your left, is that correct?

20 A Yes.

21 Wait. Repeat the question.

22 Q You approached him from the rear, is that correct?

23 A Yes, diagonally from the rear.

24 Q Then eventually you went into the eastbound lane to get
25 closer to him and at some point got parallel to him when you

1 actually began to speak to him; is that correct?

2 A Yes, sir.

3 Q If Mr. Robertson were smoking with his right hand in the
4 way that you have just described, and he were to the right of
5 you and he were holding it like this, how is it that you were
6 actually able to see the cigarette and that it wasn't obscured
7 by his palm?

8 A Depends on where he was facing. He could have been
9 facing like this, looking around. I just remember. It's as
10 far as memory after four years. He could have had his neck
11 turned. He didn't have to be facing directly west the entire
12 time.

13 Q If he was holding --

14 THE COURT: You are arguing with him now. We get
15 it. You can argue it later.

16 Q Detective Sullivan, would you say it is possible that you
17 didn't quite get as good a look at the cigarette as you recall
18 that you did?

19 A I remember seeing him smoking. It looked to be like a
20 blunt. So that was my recollection. How exactly he was
21 facing or, you know, the direction he was facing, I can't
22 exactly say for certain.

23 Q Putting side for the moment the appearance of the
24 cigarette itself, is it your view that the way that
25 Mr. Robertson was holding the cigarette is indicative of

1 smoking marijuana as opposed to a regular cigarette?

2 A No.

3 I've -- I used to be a smoker, unfortunately. And
4 I'd smoke sometimes this way, sometimes this way, but commonly
5 I saw whenever -- whenever people smoked marijuana, smokes
6 like this.

7 Q So if you see somebody on the street holding a cigarette
8 in that manner that you have indicated Mr. Robertson was doing
9 it, would you say it is more likely than not that they are
10 smoking marijuana as opposed to a regular cigarette?

11 A No.

12 It might make you give a second look. Maybe
13 something like oh, wait. Is he smoking? I only approached
14 him because I wanted to see better.

15 Q Is it your view that seeing somebody smoking a cigarette
16 in that manner gives you cause to detain them?

17 A Detain? No. But stop and talk to, investigate further,
18 yes.

19 Q So you say it gives you cause to stop them.

20 Does that give you reasonable suspicion to conduct a
21 stop and a search of somebody?

22 A A stop?

23 Q Yes.

24 A To investigate further? The stop could have resulted in
25 him stopping, talking to me and showing me what it was and me

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1 maybe driving away like oh, sorry. I thought you were smoking
2 weed. It could have resulted in that. But, unfortunately,
3 Mr. Robertson didn't do that.

4 Q But it is your view that you would have the right to
5 order somebody to stop and speak to you as a result of making
6 that observation, correct?

7 A Yes, sir. It would give me the suspicion.

8 Q I would like to introduce PX 11. It is already in
9 evidence.

10 I believe you have testified this was the online
11 form, part of the paperwork?

12 A Yes. Scratch copy, sir.

13 Q Is this something you filled out when you returned to the
14 precinct after arresting Mr. Robertson?

15 A Yes, sir.

16 Q Would you fill out this document before you fill out any
17 property vouchers, for example?

18 A Usually.

19 Q When you fill out a report like this one, do you attempt
20 to include all of the key information about the incident that
21 occurred?

22 A You do your best to what the -- the way the report is
23 designed. It is a general copy -- it is a general report. So
24 sometimes you can encompass everything, sometimes you can't.

25 Q Detective Sullivan, as part of your training originally

1 as a police officer, did you receive training on what is meant
2 by reasonable suspicion and probable cause?

3 A Yes.

4 MR. HARVIS: Objection.

5 THE COURT: Overruled.

6 Q Are you aware, Detective Sullivan, that if you stop
7 somebody and you don't have reasonable suspicion or probable
8 cause, that even if you find some evidence on them, that may
9 later be excluded when that person is prosecuted?

10 MR. HARVIS: Objection.

11 THE COURT: Sustained.

12 A I don't really understand.

13 THE COURT: Sustained.

14 THE WITNESS: That means I don't talk?

15 THE COURT: That means don't answer the question.

16 THE WITNESS: Sorry, sir.

17 MR. VALDES: Let me try to rephrase.

18 Q Do you have an understanding that the procedures that you
19 as a police officer follow can have an effect on whether
20 evidence ends up being admissible or not in a criminal case?

21 MR. HARVIS: Objection.

22 THE COURT: Overruled.

23 A Yes.

24 Q What is that understanding?

25 THE COURT: Sustained.

1 Q Is it normally your practice then that when you fill out
2 a document like this you want to include in there the
3 information that gave you the initial right to approach a
4 suspect?

5 A It can be in there. Like I said, there was only a
6 limited amount of space given. I wanted to outline the top
7 charges. But I've commonly had, you know, larger cases, you
8 know, where we charged a new -- a bunch of charges that
9 actually filled up the entire charge bracket that's given on
10 the form. We've had to articulate that to the DA's office so
11 they wouldn't even show up on the form.

12 Do you understand what I am getting at?

13 Q So you would write it on a separate form?

14 A No. We would just tell the DA's office.

15 Q You wouldn't include that information in the arrest
16 report?

17 A No.

18 There is only so much room given. So if there is
19 more than so many crimes that are broken or violated, you
20 wouldn't put it on. There wouldn't be room for it.

21 Q Let me turn to the second page of this exhibit.

22 If we can look down at the narrative section that
23 you read before.

24 Okay. Is it your testimony that there is no space
25 on this form to say anything else?

1 A No. There is a little bit of space. But I guess I
2 didn't feel I was enough of a wordsmith to fit everything in
3 there. I knew I was going to be speaking to the DA's office
4 about it anyway so I didn't deem it necessary.

5 Q If we look up a little further up on this document, the
6 section that says type of drug used and you marked none.

7 There is a separate section -- let's keep that part
8 up. There is a separate section below that says charges.

9 A What do you want me to look at now, sir?

10 Q She is going to pull it up in one second.

11 That bottom portion there, charges, is that where
12 you include all of the information that relates to the charges
13 that are actually recommending be brought against the suspect?

14 A These will be the charges that I felt the suspect
15 violated or that he should be charged with, is that the
16 question?

17 Q Yes.

18 A Yes.

19 Q So the section that says type of drug used, that part
20 doesn't only call for information about crimes with which you
21 are charging the suspect, correct?

22 A No. But what's --

23 Q That section type of drug used you marked none. Does
24 that not mean that you did not believe he had used marijuana?

25 A I believe in the way I was filling it out that I couldn't

1 prove it because I hadn't recovered the -- what I believed to
2 be the marijuana blunt.

3 Q So you only include information on this report that you
4 believe the District Attorney can later prove?

5 A No. I'm saying what I could. I couldn't find the blunt.
6 So I couldn't -- I thought he was smoking one but then upon
7 further investigation I couldn't find it to confirm my
8 suspicion. So I didn't put it down.

9 Q Based on your training as a police officer, you didn't
10 believe that it would be relevant for the District Attorney's
11 office to know why you were justified in approaching the
12 suspect in the first place?

13 MR. HARVIS: Objection.

14 THE COURT: Sustained.

15 A That was --

16 THE COURT: Sustained.

17 When I say "sustained," wait for another question.

18 THE WITNESS: Sorry, sir. I apologize.

19 THE COURT: That's all right.

20 Q Despite the fact that you believed you couldn't prove
21 that he had been smoking marijuana, you didn't believe it was
22 relevant to include in this form that you had observed him
23 smoking marijuana?

24 MR. HARVIS: Objection.

25 THE COURT: Sustained.

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1 Q Right above that portion that says type of drug used
2 there is another section I want to bring your attention to,
3 physical condition.

4 Detective Sullivan, you see that there are sections
5 in this physical condition portion of the form that refer to
6 intoxication from alcohol, intoxication from drugs or
7 intoxication from an unknown source?

8 Do you see that?

9 A Yes.

10 Q You see that none of those boxes are checked?

11 A Yes.

12 Q Why is it that you didn't check those boxes?

13 A Maybe I forgot. I don't know.

14 Q You have testified today as to the recollection that you
15 have and the size and shape of the marijuana cigarette. You
16 are saying that you didn't recall at that point that that had
17 occurred?

18 A No. I'm saying maybe I just forgot to skip the -- I
19 skipped the box and didn't --

20 Q Do you view it as part of your job as a police officer to
21 include all relevant information in these?

22 A I try to.

23 MR. HARVIS: Objection.

24 THE COURT: Overruled.

25 What did you say?

1 THE WITNESS: I try to.

2 Q Would you agree, Detective Sullivan, that there is no
3 reference anywhere on this form to the fact that you believed
4 he was smoking marijuana at the time, is that correct?

5 A That's correct.

6 Q Bring up PX 12. It is also already in evidence.

7 Detective Sullivan, I believe you testified that
8 this is a document that is -- basically they use the
9 information in your scratch copy and they type up this form,
10 is that correct?

11 A Yes, sir.

12 Q That's done by the LAPS officer that types it?

13 A Yes, sir.

14 Q If you would take a look through this document and if you
15 could tell me whether you see any reference in this document
16 to the fact that you thought he was -- that you thought
17 Mr. Robertson was smoking a marijuana cigarette?

18 THE COURT: It's in evidence. You can argue from it
19 later.

20 I assume your position is there is no reference to
21 it?

22 MR. VALDES: Correct, Your Honor.

23 THE COURT: If you are right, you can argue from it
24 later. The jury has access to the document. Let's not give
25 him a homework assignment here.

1 MR. VALDES: Bring up PX 13.

2 Q Briefly, Detective Sullivan, you are not aware of a
3 reference to the marijuana cigarette in this document either?

4 A This is the complainant? No, I don't believe so. I can't
5 really read it.

6 Q Bring up PX six.

7 MR. BROOKS: Your Honor, this document is not in
8 evidence.

9 THE COURT: All right.

10 MR. VALDES: I apologize. It should be 6-A.

11 THE COURT: That's okay. This is in evidence,
12 right?

13 MR. VALDES: Yes.

14 Q Detective Sullivan, you testified previously about this
15 document.

16 Can you just tell us what this is again?

17 A This is the -- the accusatory instrument generated by the
18 DA's office, I believe.

19 Q Do you see it as part of your job as a police officer to
20 provide all relevant information to the District Attorney's
21 office so that they can then prosecute the individual you
22 apprehended?

23 A Yes.

24 Q Do you see any reference in this document to the
25 marijuana cigarette that you believe Mr. Robertson was

1 smoki ng?

2 A I previously read it and I don't believe so.

3 Q You provided information as the arresting officer to
4 Ms. Woods of the District Attorney's office to allow her to
5 create this affidavit, is that correct?

6 A Yes.

7 Q You knew that you were providing that information in
8 order that the District Attorney might use it in a criminal
9 prosecution against Mr. Robertson?

10 A Yes.

11 Q Are you aware, Detective Sullivan, of any other document
12 created at or around the time of the incident that contains a
13 reference to the marijuana cigarette you believe he was
14 smoki ng?

15 A No.

16 Q Isn't it true that the first time that the marijuana
17 cigarette was mentioned was in an affidavit that Officer
18 Prince submitted in this case?

19 A I talked to the DA's office about it. If she doesn't
20 choose to deem it necessary to charge him with it, that's up
21 to her.

22 Q Maybe you misunderstood the question. I am asking about
23 a reference to the marijuana cigarette itsel f.

24 Are you aware that the first time that marijuana
25 cigarette was mentioned in any of the paperwork or any other

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1 document that we are aware of, it was in an affidavit that
2 Officer Prince submitted in this litigation?

3 THE COURT: That wasn't your first question. Your
4 first question was just mentioned, not in a document. You are
5 focusing only on documents?

6 MR. VALDES: Yes, Your Honor.

7 THE COURT: All right. Go ahead. You can answer
8 the question.

9 A If you say so. I wasn't really keeping track of all
10 the -- you put in a lot of documents before. You are saying
11 that am I aware that this is the first time in this case that
12 it was mentioned? Or the documentation was mentioned of it?

13 Q Correct.

14 A I guess so, yes.

15 Q After Mr. Robertson was arrested on the early morning of
16 April 15th, you went back to search for the marijuana
17 cigarette, is that correct?

18 A Yes, after he was taken into custody.

19 (Continued on next page.)

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1 CONTINUED CROSS-EXAMINATION

2 BY MR. VALDES:

3 Q You never found that marijuana cigarette?

4 A No, sir.

5 Q You testified earlier that when Mr. Robertson was running
6 you saw something fall in the path of his flight; is that
7 correct?

8 A Yes.

9 Q Is it correct that you didn't actually see him throw
10 something off of his person, you simply saw it fall in the
11 flight of his path; is that correct?

12 A It could have been said that his arms were in up and down
13 motion. That's also the same motion when a person runs. It's
14 the best way to describe it fell from him. Now, could he have
15 thrown it down? Yes, it's very probable that he did but it
16 also could have been off of him when he running.

17 Q You didn't actually observe him while running throw
18 something away?

19 A I believe I did at the time. It made sense to me.

20 Q The object, did it fall in his path or fall a few feet
21 away from him right in his direction?

22 A Right in his path.

23 Q When the object fell, did you get a good look what the
24 object was?

25 A No, I wasn't focused on it.

1 Q You had no reason to believe that it was of any
2 particular thing, just saw an object fall; you continued your
3 pursuit; is that correct?

4 A Yes.

5 Q How soon after Mr. Robertson started running did you see
6 the object fall?

7 A Pretty soon after. It was right after he went off the
8 curb to go diagonally south on Williams, was just about the
9 same time he came off the curb.

10 Q I believe you said it fell while he was running west on
11 Pitkin Avenue on direct; do you recall that?

12 A He still would have been going west, southwest, a better
13 description, I guess.

14 Q Your testimony is as he was turning on to
15 Williams Avenue; is that correct?

16 A He didn't exactly make a turn like he was in a car. He
17 went diagonal because he was on foot, as any of us can do.

18 Q At the time that that object fell, Mr. Robertson had his
19 back to Officer Prince; is that correct?

20 A I believe so but I don't know what Officer Prince's
21 position was. I could remember what mine was.

22 Q As far as you know, it was in the first few seconds he
23 started running so Officer Prince was chasing him from behind,
24 correct?

25 A I would say it would be more coming from the side. He

1 still had to get around wherever he was, the door open, get
2 around the car. It would be more from the side.

3 MR. VALDES: I would like to introduce P X 29 which
4 is already in evidence.

5 Q There's been testimony earlier this is a satellite image
6 of the intersection of Pitkin and Williams Avenue. Does that
7 comport with your recollection of that area?

8 A Yes.

9 Q Where would you say Mr. Robertson was standing when you
10 first spoke to him, if you could point on the block on Pitkin?

11 A It will go in there?

12 THE COURT: A dot will appear if you touch the
13 screen.

14 A Somewhere from what I recollect, right around here.
15 That's way far to the left, more to the right than I was
16 saying.

17 THE COURT: Why don't you use your powers of
18 description?

19 THE WITNESS: You see where the corner of the
20 fence -- I believe the fence would be on the southeast corner
21 of the intersection, that fence line right there, the darker
22 gray area as described. Can everyone see that? He would be
23 somewhere right about where the door is which would be
24 indicated on Pitkin by the darker section.

25 THE COURT: Right there (indicating)?

1 THE WITNESS: Yes, sir, somewhere around there,
2 probably towards the left side of it.

3 THE COURT: By the arrow?

4 THE WITNESS: Yes.

5 Q Mr. Robertson ran west initially; is that correct?

6 A Yes, sir.

7 Q After he started to run, you started to go forward in
8 your car, I assume; is that correct?

9 A Yes.

10 Q When he turned onto Williams Avenue, were you already
11 turning onto Williams Avenue at the same time?

12 A I believe I had to get around the curb.

13 Q You did or did not get around the curb?

14 A I had to get around the curb when I go over it.

15 Q At some point did Mr. Robertson cross in front of the
16 path of your vehicle?

17 A He was nearly across the street on the sidewalk by the
18 time I was turning fully onto Williams.

19 Q When Mr. Robertson was eventually handcuffed, where did
20 he actually end up? Can you point out that area?

21 A I believe it was somewhere around here -- this is way
22 off.

23 THE COURT: Why don't you slide that cursor over
24 there, tell us where to stop?

25 THE WITNESS: You're going to the other side of the

1 street -- other side of the street, you're right in the
2 middle of the street now. Hold, very cool -- sorry, Judge.
3 Now you're going to come south a little bit on the sidewalk,
4 south a little bit, south -- right about there,
5 approximately.

6 Q That's where he actually ended up on the ground, correct?

7 A Approximately, sir.

8 Q That's around where you saw him struggling with
9 Officer Prince; is that correct?

10 A Yes, there and about.

11 Q Did you observe at any time that Mr. Robertson stopped
12 and changed direction back towards the direction of
13 Officer Prince?

14 A No.

15 Q You testified that you recovered a glove from a sewer
16 drain. Can you point out on this map approximately where that
17 drain is located?

18 A I think we saw two drains -- I believe the one on
19 Williams, the southeast corner is the one that I was speaking
20 of.

21 THE COURT: Southeast corner is the one by the
22 lower right quadrant?

23 THE WITNESS: It's --

24 THE COURT: Down in this picture is south?

25 THE WITNESS: Yes.

1 THE COURT: East is to the right?

2 THE WITNESS: Yes. Yes, right around there would be
3 the drain.

4 Q Is that anywhere near the area where he ended up on the
5 ground with Officer Prince?

6 A No, it was farther down here.

7 THE COURT: How much more do you have?

8 MR. VALDES: About 20 minutes, your Honor.

9 THE COURT: We'll break for the day. You'll hear
10 summations in the morning and my jury charge. You'll be
11 deliberating tomorrow just to let you know where we are in the
12 case.

13 Don't let information find you. Don't go looking
14 for information. You know the drill by now.

15 Safe home. Be here on time, please. We'll start
16 promptly at 9:30.

17 Have a nice evening. Good night. All rise.

18 (Jury leaves courtroom.)

19 THE COURT: I'll put a draft charge together, have
20 it for you in the morning. At the conclusion of the evidence
21 we'll have a charge conference and you'll sum up.

22 MR. GOLD: I apologize to the court. I have
23 another commitment for another client. We'll have another
24 associate from my office here tomorrow.

25 THE COURT: No problem. Good night.

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